

NON-GOVERNMENTAL ORGANISATIONS, AGENDA-SETTING AND THE WORLD TRADE ORGANISATION

by

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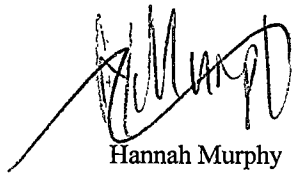
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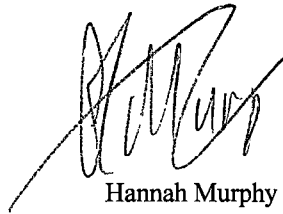
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ABSTRACT

The World Trade Organisation (WTO), since its establishment in 1995, has become a major target for non-governmental organisations (NGOs) representing a diverse range of interests. Contrary to popular perception, NGOs do not simply stage street demonstrations outside WTO ministerial conferences – typified by the ‘Battle of Seattle’ protests at the WTO’s third ministerial conference in 1999 – but undertake a variety of lobbying activities in their efforts to impact the negotiating positions of WTO member states. This thesis seeks to understand more about the activities of professional NGOs with a broadly reformist platform in relation to international trade negotiations. It does so in order to advance understandings about the varied roles of NGOs in international politics and their relationships with states.

Adopting a governance-centred approach based upon neoliberal institutionalism, I employ three cases of NGO campaigns in the areas of core labour standards, foreign investment rules, and intellectual property. I examine the strategies and tactics utilised by NGOs in attempting to influence decision-making at the WTO and the roles played by NGOs in the international trade regime. Given the formal constraints on NGO decision-making input at the organisation and the considerable economic and political costs and benefits of trade liberalisation for states, the WTO serves as a ‘hard’ test case for assessing the contributions of NGOs to international policy-making.

I find that NGOs undertake roles, independently of states, at the agenda-setting phase of the international trade policy process, though their campaign activities inevitably assist various member states that possess complementary objectives. Specifically, through their international campaigns, NGOs publicise neglected trade-related issues, persuade other relevant actors to support their positions, boost the resources of less developed member states, and highlight normative rationales for policy positions. However, the three cases illustrate that these roles differ according to the type of policy change advocated by NGOs and whether their campaign objectives resonate with developing or developed nations. While it is unlikely that NGOs will be granted participation status at the WTO in the foreseeable future, an examination of recent NGO activity in relation to the WTO nonetheless contributes understandings of the important role of NGOs in international politics.

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ACRONYMS AND ABBREVIATIONS

ACP	African, Caribbean and Pacific Group
APEC	Asia-Pacific Economic Cooperation
ASEAN	Association of South East Asian Nations
BIT	Bilateral Investment Treaty
CAFOD	Catholic Agency for Overseas Development
CIEL	Center for International Economic Law
COSATU	Congress of South African Trade Unions
CPTech	Consumer Project on Technology
CUT	Central Única dos Trabalhadores
CUTS	Consumer Unity and Trust Society
DSB	Dispute Settlement Body
ETUC	European Trade Union Confederation
EU	European Union
FDI	Foreign Direct Investment
FOEI	Friends of the Earth International
FTA	Free Trade Agreement
FTAA	Free Trade Agreement of the Americas
G-20	Group of 20
G-77	Group of 77
G-90	Group of 90
GATS	General Agreement on Trade in Services
GATT	General Agreement on Tariffs and Trade
GSP	Generalised System of Preferences
HAI	Health Action International
Health GAP	Health Global Access Project
IAPT	Institute for Agriculture and Trade Policy
ICC	International Chamber of Commerce
ICFTU	International Confederation of Free Trade Unions
ICSID	International Centre for Settlement of Investment Disputes
ICTSD	International Centre for Trade and Sustainable Development
IGTN	International Gender and Trade Network
IISD	International Institute for Sustainable Development
ILO	International Labour Organisation
IMF	International Monetary Fund
IP	Intellectual Property
ITO	International Trade Organisation

ITSs	International Trade Secretariats
LDCs	Less Developed Countries
MAI	Multilateral Agreement on Investment
MFN	Most-Favoured Nation
MIGA	Multilateral Investment Guarantee Agency
MNCs	Multinational Corporations
MSF	Médecins Sans Frontières
NAFTA	North American Free Trade Agreement
NGO	Non-Governmental Organisation
OECD	Organisation for Economic Cooperation and Development
OME	Office of Monitoring and Enforcement
PhRMA	Pharmaceutical Research and Manufacturers of America
PI	Portfolio Investment
PSI	Public Services International
QUNO	Quakers United Nations Office
SEATINI	Southern and Eastern African Trade Information and Negotiations Institute
TAC	Treatment Action Campaign
TAG	Treatment Action Group
TILS	Task Force on Trade, Investment and Labour Standards
TNCA	Thai NGO Coalition on AIDS
TRIMS	Trade-Related Investment Measures
TRIPS	Trade-Related Intellectual Property Rights
TSMO	Transnational Social Movement Organisation
TUAC	Trade Union Advisory Committee
TUC	Trade Unions Congress
TWN	Third World Network
UNCHR	United Nations Commission for Human Rights
UNCTAD	United Nations Conference on Trade and Development
UNGASS	United Nations General Assembly Special Session
USTR	United States Trade Representative
WDM	World Development Movement
WGTI	Working Group on Trade and Investment
WHA	World Health Assembly
WHO	World Health Organisation
WIPO	World Intellectual Property Organisation
WSF	World Social Forum
WTO	World Trade Organisation
WWF	World Wildlife Fund

Chapter 1

INTRODUCTION: NGOs, AGENDA-SETTING AND THE WTO

In recent decades, the negotiation of international rules to manage trade liberalisation has become increasingly controversial. Whereas free market proponents claim that trade liberalisation can deliver a range of benefits such as job creation; increased efficiency; and technology transfer to less developed countries (LDCs); critics maintain that it destroys national industries; displaces workers; negatively impacts the natural environment and threatens national identity. For these reasons, the World Trade Organisation (WTO), since its establishment in 1995, has become a major target for non-governmental activist organisations representing a diverse range of interests. Contrary to popular perception, the NGOs that target the WTO do not simply stage street demonstrations outside WTO ministerial conferences – typified by the ‘Battle of Seattle’ protests outside the WTO’s third ministerial conference in 1999 – but undertake a variety of lobbying activities in their efforts to impact the negotiating positions of WTO member states.

It is the goal of this thesis to understand more about the growing role of NGOs in relation to the international trade regime administered by the WTO and their complex relationships with WTO member states. Adopting a governance-centred perspective based on neoliberal institutionalism, I examine the campaign tactics employed by NGOs in contesting international trade issues and assess their role in the international trade regime. I do so by examining three case studies of NGO campaigns directed at the organisation in the areas of labour standards, intellectual property (IP) rights and foreign investment rules. Employing NGO campaign materials, WTO documents, interview data and existing literature on NGOs and the WTO as sources, I find that NGOs undertake roles, independently of states, at the agenda-setting phase of the international trade policy process, though their campaign activities inevitably assist various member states that possess complementary objectives. Specifically, NGO campaigners harness political opportunities to publicise neglected trade-related issues, persuade other relevant actors to support their positions, boost the resources of less developed member states, and highlight normative rationales for policy positions. However, the three cases illustrate that the roles of NGOs in the international trade regime differ according to the type of policy change advocated and whether their campaign objectives resonate with developing or developed nations. While it is unlikely that NGOs will be granted participation status at the WTO in the foreseeable future, an examination of recent NGO activity in relation to the WTO nonetheless contributes our understanding of the roles played by NGOs in international politics.

The WTO and NGOs

Established in 1995 with its headquarters in Geneva, Switzerland, the WTO is a legal institution that provides an arena for member states to discuss the rules governing the multilateral trading system, work towards trade liberalisation and settle trade disputes. It also periodically reviews the trade policy of member states to assess their openness to trade. As of November 2008, the WTO had 153 member states, while another 30, mostly developing countries, were awaiting accession. The organisation only has a small budget (approximately \$US 186 million for 2008) and a secretariat staff of 625 who provide technical support, analyse world trade, and manage the WTO's relations with the public and media. This reflects the role of the WTO as a negotiating forum and governance mechanism rather than a funding source for nations suffering balance of payment problems or other financial crises. Indeed, this is the role of the WTO's sister organisations, the World Bank and International Monetary Fund (IMF).

According to Robert Keohane and Joseph Nye (2001a), the recent politicisation of global economic institutions, particularly the WTO, is largely due to their success. In addition to the 1947 General Agreement on Tariffs and Trade (GATT), the WTO incorporates a range of accords concerning a host of economic policy areas such as trade in services, IP rights, and trade-related investment measures. Specific WTO agreements relate to agriculture, textiles, food safety, electronic commerce, and government procurement. There are significant variations in the distribution of costs and benefits of each agreement for member states. States therefore have objective interests in regard to these issues, which are not only based upon their comparative advantages in the production of particular goods and services, but a host of domestic political factors (see Putnam 1988).

In terms of judicial and regulatory powers, the WTO is one of the most effective international organisations currently in existence (Gilpin 2001, 382). The agreements and articles administered by the WTO are mandatory for all WTO members through the imposition of legal obligations. However, the organisation's effectiveness in decreasing barriers to trade has been compromised by the ongoing failure of WTO members to finalise the Doha Round of trade negotiations, which began in 2001.

The broad range of issues dealt with at the WTO such as food safety, textiles and agriculture to trade in services and IP reflects the growing trend to global governance whereby domestic policy issues are increasingly transferred to the international level of decision-making, thus consolidating and increasing interdependence among nation-states. This phenomenon has meant that NGOs and other types of non-state actors no longer work solely within domestic contexts to influence and affect changes in these policy areas (Ayres 2002, 202). Since the 1970s, most major inter-governmental organisations have experienced a growth in direct exchanges with NGOs, although there is less agreement as to how these relationships should be conducted and for what purpose. Nevertheless, WTO member states have repeatedly concurred that the distinctive trade treaty basis

of the WTO precludes the direct involvement of NGOs in the decision-making procedures of the organisation. Instead, the WTO advocates that those seeking to influence international trade negotiations at the WTO do so through their national representatives.

Despite the limits on formal NGO participation at the WTO, the expansion of global trade law through the WTO and the growth in the number of NGOs operating internationally (see Boli and Thomas 1997, 1999; Union of International Associations 2004-2005), has resulted in a vast number of grassroots, national, and international NGOs developing an interest in the activities and decision-making processes of the WTO. Professional international NGOs like the Catholic Agency for Overseas Development (CAFOD), World Wildlife Fund (WWF) and the International Centre for Trade and Sustainable Development (ICTSD), agree on the need for global trade rules but seek in various ways to influence the WTO's agenda. Their campaigns often focus on the effects of trade liberalisation on non-economic policy issues such as the environment, public health, labour standards, national culture and identity, and the provision of public services.

In addition to substantive policy issues, the WTO has also come under fire from both scholars and NGOs who are deeply concerned with the perceived lack of democratic accountability engendered by the organisation's decision-making procedures. These criticisms, particularly in the wake of the 1999 Seattle Ministerial Conference, have revolved around the transparency of decision-making processes and the absence of mechanisms for NGO participation. For example, Rorden Wilkinson (2002) claims that powerful member states dominate decision-making forums, business actors have disproportionate access and influence at the organisation, and the day-to-day working practices of the WTO are closed to public scrutiny. Further, it is argued that WTO member states can only negotiate within a neo-liberal framework, committing them to the liberalisation of their national economies. Indeed, Jackie Smith contends that at the WTO, economic policy decisions are simply considered technical, rather than political, decisions (2002, 209).

While the sources of civil dissatisfaction with trade liberalisation and the WTO are many and varied, much more needs to be understood about the different ways in which NGOs target the WTO and the roles they play in the functioning of the international trade regime. The broad range of NGOs that seek to influence international trade policy at the WTO not only wage public campaigns on policy and procedural decision-making issues, but engage with various WTO member states on a regular basis, sharing information and – in some cases – obtaining places on official governmental delegations to the WTO. Similarly, limits on formal NGO participation at the WTO have not prevented an increasing number of NGOs from attending the WTO's biennial ministerial conferences as observers.

In spite of the growing number of NGOs, their increasingly active engagement with international trade issues and evolving relationships with nation-states, much of the academic literature on NGOs and the WTO has focused on their untapped potential to improve the WTO's legitimacy.

This theoretical debate is at odds with the empirical reality of the growing number of NGOs seeking to influence decision-making at the WTO. While there is some discussion in the WTO-NGO literature regarding the success of single campaign issues, where NGOs are said to play important roles in affecting the negotiation of WTO agreements, there is little discussion of the mechanisms or patterns of NGO influence at the WTO, the question of why some NGO campaigns fail to achieve their stated goals, or the roles they play in the international trade regime more generally. This thesis seeks to address this mismatch between the existing WTO-NGO literature and the real-world activities of NGOs as political actors within the international trade policy process.

NGOs and transnational activism

The focus on the democratising potential of NGOs for the WTO parallels developments in the literature on NGOs and transnational activism more generally. Despite their presence in the global polity for over a century, it has only been in recent decades that international relations scholars have begun to consider the important roles that actors other than nation-states play in international politics. The literature on NGOs and transnational activism is an emerging inter-disciplinary field that represents an attempt to bridge at least two sets of scholarship: first, the literature on transnationalism, regimes, and norms in international relations; and second, the discourse on the globalisation of social movements and the diffusion of norms in sociology (see Tarrow 2001 and Risse 2002 for thorough and insightful reviews of developments in these areas). Of most relevance to this study are the contributions concerning international NGOs (Weiss and Gordenker 1996; Willetts 1996; Keck and Sikkink 1998; Boli and Thomas 1997, 1999; Bob 2005; DeMars 2005); the organisational patterns of different types of non-state actors beyond the state (Smith, Chatfield and Pagnucco 1997; Stiles 2000; Smith and Johnston 2002; Bandy and Smith 2005; della Porta and Tarrow 2005); and NGO activity in relation to particular issues and institutions (Sikkink 1993; Wapner 1995; Ayres 1998; Fox and Brown 1998; Price 1998; O'Brien, Goetz, Scholte and Williams 2000; Nelson 2002; Joachim 2007).

Across the transnational NGO advocacy literature, the majority of contributions, many emanating from the “normative turn” in international relations scholarship (see Tarrow 2001), have focused on successful NGO campaigns, often in the areas of human rights and the environment. Such accounts detail the role of NGOs in creating and disseminating ideas that are said to overwhelm the instrumental goals and interests of other actors, including nation-states and business organisations. For example, Keck and Sikkink’s landmark text, *Activists Beyond Borders* (1998), explains that NGO action against a government’s human rights violations involves weak, resource-poor domestic NGOs linking up with more powerful international NGOs, other governments and international institutions, who then place external pressure on the recalcitrant government to reform. Similarly, Paul Wapner illustrates how NGO campaigns directed against the environmentally unfriendly practices of large corporations can result in these corporations

capitulating to NGO demands and altering their production techniques (1995). In ceasing their offending activities, seemingly more powerful actors are said to have had their interests (or even their *sovereignty*, in the case of nation-states), 'reconstructed' by the moral pressure of NGOs (see also Sikkink 1993; Klotz 1995; Price 1998; Risse, Ropp and Sikkink 1999; Khagram, Riker and Sikkink 2002; Joachim 2007).

The normative cast of research in this area has resulted in scholars attempting to demonstrate that NGOs are important actors in international politics with the potential to rival nation-states. However, in emphasising the power of moral values *vis-à-vis* the interests of nation-states, much of the NGO scholarship does not pay sufficient attention to specifying the conditions that *constrain* NGO activity. These include the structure of the international system; the material and political interests of nation-states; the profit-maximising behaviour of business; alternative or competing moral values; and the rules, practices and decision-making processes of international institutions. In particular, by claiming that norms and ideas disseminated by NGOs can reconstruct interests, insufficient attention is paid to the ways in which the normative goals of NGOs and the strategic, material and political interests of nation-states (and other actors) may be complementary. This suggests that a different characterisation of the role of NGOs in international politics might be more accurate. Instead of being simply categorised as agents of moral pressure, the effects of NGO activity in international politics may additionally involve enhancing the clout of particular states in international negotiations and increasing the likelihood that certain policy decisions will be taken over others. It is in this direction that this thesis looks in investigating the role of NGOs in the international trade policy process at the WTO.

The emphasis on the issue areas of human rights and the environment in the norms-based literature on NGOs in international politics has also directed attention away from NGO advocacy in the area of international trade, where NGO success has been more nuanced and thus less visible (see O'Brien *et al.* 2000). Indeed, the prevailing model of NGO advocacy, whereby states and other actors reconstruct their interests to accommodate the ideas and values created and disseminated by NGOs does not easily apply to NGO activism at the WTO. This is because international trade is a policy arena dominated by states and business actors seeking to realise their economic and political interests. NGOs have not been granted participation status at the WTO, and trade negotiations are technical and complex. Yet despite this, the number of NGOs that actively campaign on WTO issues is steadily increasing. This thesis will attempt to address this puzzle in order to fill in what appears to be a gap in the transnational activism literature.

Rationale and approach

This study seeks to understand more about the activities of NGOs in relation to trade policy and negotiations at the WTO in order to advance understandings about the varied role of NGOs in international politics. Specifically, I seek to understand the role played by NGOs at the WTO by

examining (1) the strategies and tactics employed by NGOs in attempting to influence decision-making at the organisation; and (2) the extent to which NGOs contribute to the international trade regime. Given the formal constraints on NGO decision-making input at the organisation and the considerable economic and political costs and benefits of trade liberalisation for states, the WTO serves as a 'hard' test case for assessing the contributions of NGOs to international policy-making. At the same time however, the selection of the WTO allows for an examination of the interactions between nation-states and NGOs in relation to a range of international economic and social policy issues.

Of the many different types of NGOs, I focus on public interest, non-profit advocacy organisations, such as Oxfam International and the Third World Network (TWN), which have a broadly reformist platform in relation to the WTO. I do not examine professional associations that represent business interests such as the International Chamber of Commerce (ICC) (for typologies of non-governmental actors in the WTO context see Bellmann and Gerster 1996, 35 and Scholte, O'Brien and Williams 1999, 112-116). In contesting the various aspects of the international trade regime, these NGOs come together in common campaigns, utilising a number of different strategies in order to influence the WTO's policies and decision-making processes. Unlike the normative literature dedicated to NGOs in international politics, which heralds their democratising potential, I do not necessarily seek to cast NGOs as inherently noble or virtuous. Rather than viewing NGOs primarily as antidotes to democratic deficits, this study instead examines the roles of NGOs within the international trade policy process at the WTO. Additionally, I do not enter the debate about the accountability or representativeness of NGOs. Indeed, I accept that they play an important role in the international policy arena regardless of whether they possess these desirable attributes.

In investigating the role of NGOs at the WTO, I adopt a governance-centred approach, which provides scope to examine not only the normative values and ideas disseminated by NGOs and the role of states' interests (and how these intersect), but also the institutional characteristics of the WTO. Given that NGOs are formally excluded from directly participating in WTO decision-making, I focus upon how NGOs support, through normative argument, the interests of particular WTO member states with whom they share common objectives in relation to given issues at the WTO. Additionally, I examine the institutional characteristics of the WTO in terms of the rules, norms, practices and decision-making procedures in place at the organisation that condition interactions among governments and NGOs, mediating their capacity to realise their objectives.

In terms of methodological approach, I employ a comparative case study method to investigate the role of NGOs in relation to the WTO policy process by way of three international NGO campaigns on trade-related issues. Each set of NGO campaigners attempted to mobilise international consensus for their campaign positions (through various public and private activities), to convince nation-states with compatible objectives to pursue an issue at the WTO and pressure those states

with opposing views and positions. The selected NGO campaigns are: (1) the campaign for the incorporation of core labour standards into WTO rules; (2) the access to medicines campaign challenging the application of the WTO's Trade-Related Intellectual Property Rights (TRIPS) Agreement to pharmaceutical products required in developing member states; and (3) the campaign against the development of a comprehensive WTO foreign investment agreement. I draw upon the insights of Alexander L. George (1979) in designing the methodological framework of this thesis.

Each of the three campaign issues broadly split WTO members along North/South lines. The goals of NGOs in relation to TRIPS and investment closely resonated with those of developing member governments, while the goals of the labour standards campaigners aligned with the objectives of the US and several European nations. The NGO campaigns also differ in the type of action demanded by WTO members. The access to medicines campaigners attempted to modify an existing WTO agreement, the investment campaign attempted to remove an issue from the WTO agenda, while the labour campaign sought to enact a new WTO accord. However, all three attempted to realise their goals by working alongside various WTO member states in order to get their issues addressed at the WTO. I examine in detail how NGO campaigners attempt to build support for their goals and engage WTO members in regard to their issues.

The selection of the above NGO campaigns to evaluate the contribution of NGOs to the policy process at the WTO provides an opportunity to examine how issues raised by NGOs are dealt with by WTO members in different ways once on the WTO policy agenda. While both the access to medicines and investment issues were addressed in a manner broadly aligning with the goals of NGOs and developing countries, the labour standards issue, supported by more powerful WTO members, did not result in any substantive policy change at the organisation. This thesis shows that the resolution of issues is heavily conditioned by the WTO decision-making procedures. Specifically, the organisation's 'single undertaking' and consensus decision-making procedures, and the one-state, one-vote system heavily condition whether actors in the policy process (be they states or NGOs) can achieve their goals (see Chapter 2 for a detailed discussion of these processes). This is highlighted by the fact that in regard to all three campaign issues, influential WTO member states did not achieve their objectives.

Thesis structure

After providing some background about the processes and operations of the WTO and the growing role of NGOs in international politics, the following chapter reviews and critically analyses the WTO-NGO and transnational activism literatures. In regard to the WTO-NGO literature, I explain that the predominance of normative understandings of NGOs as democratising agents comes at the expense of analysis into the mechanisms and impact of NGO advocacy directed at the WTO, and in particular, the role of relations between NGOs and member states. The second part of the

chapter turns to the general literature on NGOs in international politics. It assesses the relevance of the governance-centred, constructivist, and social movement perspectives for understanding NGO influence at the WTO. Though they offer important insights into how NGOs attempt to construct and disseminate norms at the international level, the constructivist and social movement approaches suffer from a number of limitations in terms of their applicability to NGOs at the WTO. The constructivist perspective does not account for the important role of interests and power structures within world politics, while social movement scholars are primarily concerned with the factors that may sustain and strengthen social movements on a global scale. As such, I find that a governance-centred approach is the best alternative for examining NGO advocacy in relation to the WTO as it situates NGO activity within the international trade policy process. It also takes account of normative values, interests and institutional practices.

Having explained some of the gaps in the literature on transnational NGO advocacy, Chapter 3 begins by outlining the key research questions guiding this study. The remainder is dedicated to setting up the methodological framework for assessing NGO influence at the WTO. In doing so, I explain the utility of a comparative case study method, which provides guidance for establishing appropriate terminology, case study selection, and theory building. The particular strengths of this method revolve around its prescriptions for setting up the cases studies to produce a level of generalisability across the cases (in order to generate new theories about NGO advocacy at the WTO) while maintaining the scope to explore the unique details of each case. The second part of the chapter introduces the three case studies of NGO campaigns and justifies of their particular merits for responding to the research questions addressed in this thesis.

The following three chapters, Chapters 4, 5 and 6, comprise the empirical component of the thesis. Each outlines an individual case study of an NGO campaign directed against the WTO. Chapter 4 details the campaign to incorporate core labour standards into WTO rules. Chapter 5 outlines the access to medicines campaign directed at clarifying the safeguard provisions of the WTO's IP agreement. Chapter 6 presents the campaign against the development of a WTO foreign investment agreement. Each chapter provides the background to the campaign issue, describes the key actors, and the campaign itself including the chronology of the campaign and the key tactics and strategies. Attention is paid to how the each issue is ultimately dealt with in the WTO arena.

Comparing and contrasting the insights of the case study chapters, Chapter 7 presents the findings of the study. I demonstrate that NGOs play a number of important roles in the agenda-setting stages of the international trade policy process that more often facilitate, rather than impede, the operation of the international trade regime. Through their campaigns, NGOs promote neglected issues, boost the negotiating resources of less developed countries, highlight the normative dimensions of trade issues, and lend moral support to the negotiating positions of member states with compatible objectives in relation to the campaign issue at stake. In undertaking these activities, the tactics and strategies utilised by NGOs are shaped by the influence and power of

WTO members with whom NGOs shared complementary goals. Where NGO campaign objectives align with the interests of developing states, NGOs play a greater role in boosting their resources through the provision of technical advice and financial assistance. For more powerful states, NGOs highlight the normative arguments for policy change at the WTO. I also find that the way in which issues are dealt with at the WTO depends upon the type of policy change advocated. Proposed policy changes that involve the WTO removing an issue from its jurisdiction or modifying an existing issue appear more likely to be acted upon than policy changes involving an expansion of the WTO's powers. This relates to the difficulties in achieving progress at the WTO due to the organisation's unique institutional characteristics, in particular, the consensus decision-making process.

Chapter 8, which concludes the thesis, explains that despite their very limited formal status at the WTO, NGOs play roles in the international trade regime at the agenda-setting stage. However, I propose that more case study research is required to verify the significance of NGO activity as well as the nature of NGO relationships with WTO member states. In particular, the increasing trend whereby NGO representatives are obtaining places on the official delegations of member states to WTO ministerial conferences requires detailed examination. Given the proliferation of NGOs at the international level and the increasing roles of multilateral economic institutions, further research on the activities of NGOs is vital for understanding how international decision-making might be improved.

Chapter 2

NGOs, STATES AND THE WTO

Introduction

There is not a great deal written about the role of NGOs in the context of WTO decision-making. This is surprising given the proliferation of studies of NGOs in the international relations literature, as well as the ongoing debates surrounding international trade liberalisation. Indeed, most of the contributions on this topic (from both scholars and NGO practitioners) limit their focus to the formal relations between NGOs and the WTO. The key thread within such discussions is prescriptive, revolving around the supposed benefits of increasing the status of NGOs at the organisation, and even allowing NGOs to participate in WTO decision-making alongside nation-states. Proponents of increasing the level of NGO input at the WTO, such as Scholte *et al.* (1999), Steve Charnovitz (2000; 2002; 2004), Daniel C. Esty (1998; 2002), and Payne and Samhat (2004), have primarily understood NGOs as democratising agents that possess the capacity to rectify the WTO's 'democratic deficits'. This perspective reflects that found in the more general norms-based literature in international relations: as Kathryn Sikkink claims for instance, "NGOs and networks are informal, asymmetrical, and ad hoc antidotes to domestic and international representational imperfections" (2002, 316). This may be true, but this study adopts a broader view of the role of NGOs in the international trade regime that focuses on their activities external to the decision-making arena of the WTO and their relations with member states. This is because even a brief investigation of NGO activity in the WTO context reveals that limits on their formal participation have not deterred NGOs from waging international campaigns on a large range of trade-related issues.

While the potential for NGO participation to reduce the WTO's legitimacy problems is an important normative debate, it remains a theoretical discussion that has focused attention away from the current role of NGOs in international trade politics and their impact on WTO decision-making. Though some existing studies deal with certain aspects of NGO activity in relation to the WTO, such as the role of the internet in NGO campaigns (Smith and Smythe 2003), national-level consultation procedures put in place by WTO member states (Capling and Nossal 2003; Capling 2005), and NGO contributions (in the form of *amicus curiae* briefs) to WTO dispute settlement proceedings (Charnovitz 2000; Howse 2003), there is no comprehensive study detailing how NGO campaigns affect the international trade regime. This represents a significant gap in the WTO-NGO literature, especially given the increasing numbers of NGOs dedicated to international trade issues, the rise in NGO campaigns that have targeted the WTO, evidence that NGOs are working closely with WTO member states in relation to particular trade issues, as well as accounts claiming that NGOs played a role in the re-negotiation of particular WTO accords such as the TRIPS

Agreement (see Abbott 2002; 't Hoen 2002; Shadlen 2004). Consequently, the goal of this thesis is to understand more about the current role of NGOs in international trade politics, rather than simply reiterate their legitimising potential for the WTO.

This chapter begins with a brief description of the WTO and its decision-making procedures, before providing an overview of the WTO-NGO literature. This comprises an outline of the WTO's mechanisms for engagement with NGOs and civil society, the inadequacies of which have been a key catalyst for generating this body of literature. The arguments and proposals put forward by those advocating greater formal involvement of NGOs at the organisation are examined. I then argue that this preliminary investigation of recent NGO activity in relation to international trade issues reveals that the normative debate that dominates the WTO-NGO literature does not align with the current practice of international trade politics and governance. Indeed, only a handful of contributions in this area, such as those of Dunoff (1998), Scholte *et al.* (1999), Abbott (2002), Tuerk (2003) and Shadlen (2004), provide some insight or starting point for considering how NGO activity might impact the WTO.

The paucity of the WTO-NGO literature means that a wider examination of the general literature on NGOs in international politics is necessary for understanding how NGOs might affect the WTO's governance of the international trade regime. This is undertaken in the second part of the chapter. I examine the governance-centred, constructivist, and global social movement approaches to understanding NGO activity in international politics. I find that the governance perspective, which views non-state actor behaviour in the context of institutional structures and practices and takes into account both normative values and instrumental objectives, provides the best platform for investigating the impact of NGO activity on WTO decision-making.

The WTO

The WTO is primarily a legal institution that provides a permanent forum for discussing the rules, norms and principles for governing international trade liberalisation, monitoring the trade policy of member states and adjudicating their trade disputes. The chief governing body of the WTO, the Ministerial Council, consists of each member's trade minister or equivalent representative. The Ministerial Council meets every two years, though given the current difficulties in completing the Doha Round, a formal ministerial conference involving all members has not been held since December 2005 (see Table 2.1). It is the WTO's General Council that manages the day-to-day work of the organisation, comprising the diplomatic representatives of member states. Additionally, there are a large number of specialised, issue-specific committees, working groups and working parties, which deal with individual WTO agreements and other trade-related areas such as the environment, development, membership applications and regional trade agreements. Each of these bodies reports to the General Council.

Table 2.1 WTO ministerial conference meetings

Year/date	Location	Outcomes
1996 (9-13 December)	Singapore	Review of first two years of WTO activity and implementation of Uruguay Round commitments. Introduced 'new issues'.
1998 (18-20 May)	Geneva	Celebration of 50 years of the GATT.
1999 (30 November to 3 December)	Seattle (US)	Collapse – failure to launch 'Millennium Round'.
2001 (9-13 December)	Doha (Qatar)	Launch of Doha 'Development' Round.
2003 (10-14 September)	Cancún (Mexico)	Collapse over agriculture and 'new issues'
2005 (13-18 December)	Hong Kong (China)	Modest progress. No progress on agricultural market access.

The WTO's General Council also meets as the organisation's Dispute Settlement Body (DSB), considered one of the most effective enforcement mechanisms of any inter-governmental organisation. As Keohane and Nye explain, the DSB acts as a "circuit breaker" in dealing with trade disputes among WTO member states by awarding the 'winner' of a dispute the right to take action equal to the damages inflicted by the state deemed to have violated WTO rules (2001a, 228). For a DSB ruling to be rejected, there must be unanimity among the states involved. But since the 'winner' from the dispute would never reject a decision in its favour, this effectively makes DSB rulings automatically binding. Additionally, if a member refuses to accept the ruling, the DSB may levy a fine. This aspect of WTO governance renders the organisation relatively effective in upholding international trade rules. In terms of its judicial and regulatory powers then, the WTO is unique among international organisations. As Robert Gilpin states, "[i]t approaches the neoliberal ideal of an effective supranational institution" (2001, 382).

In contrast to the operation of the DSB, trade negotiations at the WTO are cumbersome, tedious and slow, with trade rounds taking several years to complete. For example, the Uruguay Round, which resulted in the establishment of the WTO, took seven and a half years to negotiate, while the current Doha Round, launched in 2001, shows little sign of satisfactory completion in the near future. The difficulty with trade negotiations is not only due to the political ramifications for member states of decreasing protection for particular industries and sectors, but the decision-making procedures that underpin the trade liberalisation regime itself.

Officially, WTO decision-making is based upon the three principles of consensus, one member/one vote, and the 'single undertaking'. In regard to consensus, Article IX of the

Marrakesh Agreement Establishing the World Trade Organization states that: “[t]he WTO shall continue the practice of decision-making by consensus followed under the GATT. Except as otherwise provided, where a decision cannot be arrived at by consensus, the matter at issue shall be decided by voting” (WTO 1994). Members are formally considered equals and as such, there is no allocation of voting shares: “[a]t meetings of the Ministerial Conference and the General Council, each Member of the WTO shall have one vote” (WTO 1994). The WTO’s decision-making procedures are therefore very different to those of other international economic institutions, the World Bank and IMF, where voting power is determined by a member state’s weight in the global economy. For example, the United States holds over 16 percent of the vote in both the IMF and the International Bank for Reconstruction and Development (IBRD), while most LDCs possess less than one percent each (World Bank 2007a; IMF 2007). Additionally, trade negotiations at the WTO can only be finalised with the agreement of all members on every aspect of every agreement (the ‘single undertaking’ approach). In other words, nothing is agreed until everything is agreed (see Sampson 2001; Steinberg 2002). WTO member states therefore are formally considered equals and as a consequence, the most powerful nations do not always control the organisation’s agenda.

In practice however, the WTO’s formal decision-making procedures have given rise to the formation of a large number of bargaining coalitions with overlapping memberships (see Table 2.2). These have developed in order to bypass some of the impracticalities of a large number of participants in the negotiations. Various combinations of the US, Europe, Japan, India, Brazil, Canada and Australia comprise the most powerful of these coalitions. For example, the ‘Quad’ consists of the US, EU, Japan and Canada. Since large developing countries have become more prominent in the negotiations, the Quad has evolved into slightly larger groupings involving Brazil, India and Australia that have been variously known as the ‘new Quad’, the ‘Four/Five Interested Parties’ (FIPS), the ‘Quint’ and the ‘Group of 6’ (G-6). In effect, trade negotiations in any area are not feasible unless they are agreed to by these participating parties. Since 2004, up to six of these members have worked together in an attempt to break deadlocks, particularly in agriculture. This was the case with the FIPS following the collapse of the 2003 Cancún Ministerial Conference. It should also be noted that the European Union – known officially in WTO business as the ‘European Communities’ – has a single external trade policy. As such, the EU is a WTO member in its own right, but so too are each of its 27 member states.

In addition to the above groupings, there are several coalitions of developing country member states (for an excellent description and discussion of their evolving nature and successes at the WTO see Narlikar 2003). These include the African Group, the LDC Group, and the African, Caribbean and Pacific Group (known as the ‘ACP countries’). At the Cancún Ministerial Conference, these three groupings came together to form the Group of 90 (G-90). Another coalition, the G-20, also comprises developing nations and its goal is to obtain a better deal in relation to agriculture. Reflecting its changing composition, the G-20 has also been known as the

G-21, the G-23 and the G20+. Coalitions such as these have been particularly helpful for the very poorest of developing countries that typically lack the resources to form a studied position on all of the areas of negotiations. Another coalition, the Cairns Group, led by Australia, comprising both developed and developing countries, also seeks to decrease barriers to agricultural trade in the US and EU.

Table 2.2 Selection of key bargaining coalitions at the WTO

Name of group	Number of members	Members	Objective
Four/Five Interested Parties (FIPS) also known as the “new Quad”, the “Quint” and the “G-6”.	4, 5 or 6 of the members depending on issue at stake	Australia, Brazil, European Union, India, Japan, United States	To break deadlocks in the negotiations, particularly in agriculture
Group of 20 (G-20) sometimes known as the G-21, G-22 or the G-20+.	22 members since 21 November 2006	Argentina, Bolivia, Brazil, Chile, China, Cuba, Egypt, Guatemala, India, Indonesia, Mexico, Nigeria, Pakistan, Paraguay, Peru, Philippines, South Africa, Tanzania, Thailand, Uruguay, Venezuela, Zimbabwe	To promote interests of agriculture exporting developing countries
African, Caribbean and Pacific Group (ACP Group)	56 WTO members out of a total of 79	Angola, Antigua and Barbuda, Barbados, Belize, Benin, Botswana, Burkina Faso, Burundi, Cameroon, Central African Republic, Chad, Congo, Cote d'Ivoire, Cuba, Democratic Republic of the Congo, Djibouti, Dominica, Dominican Republic, Fiji, Gabon, The Gambia, Ghana, Grenada, Guinea, Guinea-Bissau, Guyana, Haiti, Jamaica, Kenya, Lesotho, Madagascar, Malawi, Mali, Mauritania, Mauritius, Mozambique, Namibia, Niger, Nigeria, Papua New Guinea, Rwanda, St Kitts and Nevis, St Lucia, St Vincent and the Grenadines, Senegal, Sierra Leone, Solomon Islands, South Africa,	To promote sustainable development, poverty reduction, agriculture and other development issues for developing countries

		Suriname, Swaziland, Tanzania, Togo, Trinidad and Tobago, Uganda, Zambia, Zimbabwe	
African Group	All African members of the WTO, currently 41 countries	Angola, Benin, Botswana, Burkina Faso, Burundi, Cameroon, Central African Republic, Chad, Congo, Congo (Democratic Republic), Côte d'Ivoire, Djibouti, Egypt, Gabon, The Gambia, Ghana, Guinea, Guinea Bissau, Kenya, Lesotho, Madagascar, Malawi, Mali, Mauritania, Mauritius, Morocco, Mozambique, Namibia, Niger, Nigeria, Rwanda, Senegal, Sierra Leone, South Africa, Swaziland, Tanzania, Togo, Tunisia, Uganda, Zambia, Zimbabwe	To represent the interests of African WTO members
Least-Developed Countries (LDC Countries)	32 WTO members	Angola, Bangladesh, Benin, Burkina Faso, Burundi, Cambodia, Central African Republic, Chad, Congo, Democratic Republic of the, Djibouti, Gambia, Guinea, Guinea Bissau, Haiti, Lesotho, Madagascar, Malawi, Maldives, Mali, Mauritania, Mozambique, Myanmar, Nepal, Niger, Rwanda, Senegal, Sierra Leone, Solomon Islands, Tanzania, Togo, Uganda, Zambia	To represent the interests of the least developed WTO members
Group of 90 (G-90)	64 WTO members of the African Group, ACP and LDC countries	Angola, Antigua and Barbuda, Bangladesh, Barbados, Belize, Benin, Botswana, Burkina Faso, Burundi, Cambodia, Cameroon, Central African Republic, Chad, Congo, Côte d'Ivoire, Cuba, Democratic Republic of the Congo, Djibouti, Dominica, Dominican Republic, Egypt, Fiji, Gabon, The Gambia, Ghana, Grenada, Guinea (Conakry), Guinea Bissau, Guyana, Haiti, Jamaica, Kenya, Lesotho, Madagascar, Malawi, Maldives, Mali, Mauritania, Mauritius, Morocco, Mozambique, Myanmar, Namibia,	Promote issues of importance to landlocked and island economies, less developed countries, and commodity-dependent nations; removal of preferential domestic subsidies by

		Nepal, Niger, Nigeria, Papua New Guinea, Rwanda, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, Senegal, Sierra Leone, Solomon Islands, South Africa, Suriname, Swaziland, Tanzania, Togo, Trinidad and Tobago, Tunisia, Uganda, Zambia, Zimbabwe	the European Union and the United States to allow G-90 products greater access to foreign markets
Like-Minded Group	20 members	Algeria, Bangladesh, Belarus, Bhutan, China, Cuba, Egypt, India, Indonesia, Iran, Malaysia, Myanmar, Nepal, Pakistan, the Philippines, Sri Lanka, Sudan, Syria, Vietnam, Zimbabwe	To promote the interests of developing countries, oppose the Singapore Issues and labour standards
Cairns Group	18 members	Argentina, Australia, Bolivia, Brazil, Canada, Chile, Colombia, Costa Rica, Guatemala, Indonesia, Malaysia, New Zealand, Paraguay, Peru, Philippines, South Africa, Thailand, Uruguay	Agricultural trade liberalisation

Source: WTOa and WTOb.

As for the GATT negotiating process, WTO members have also attempted to overcome the difficulties of a large membership by undertaking negotiations in smaller meeting groups of between 20 to 40 delegations. Known as the 'Green Room' consultative process (a phrase taken from the informal name of the GATT Director-General's conference room), their purpose is to "beat the consensus into shape". There are no formal rules concerning the agenda, member constitution, or frequency of such meetings (Narlikar 2003, 37). They can take place at ministerial conferences as well as in between to progress negotiations. As such, several commentators have likened the process to that of a private club (Ricupero 1998; Keohane and Nye 2001a; Howse 2003). Green room meetings have often been criticised by those left out, especially small developing countries. Since the 1999 Seattle Ministerial Conference however, the representation of developing countries in Green Room meetings has improved.

The WTO and NGOs

The WTO's limited formal relations with NGOs has been a source of controversy since its inception in 1995. 'WTO exceptionalism', a term coined by Steve Charnovitz (2000: 187), sees the organisation departing from what some commentators consider a norm in global governance, whereby NGOs are granted some form of consultative status at international organisations, particularly those related to the United Nations (UN). Although Article V of the Marrakesh Agreement that established the WTO states that "[t]he General Council may make appropriate arrangements for consultation and cooperation with non-governmental organizations concerned with matters related to those of the WTO" (WTO 1994), it did not specify how this should occur. Given this lack of guidance, it was not until mid-1996 that the WTO's General Council adopted the *Guidelines for Arrangements on Relations with Non-Governmental Organisations*, which clarified the relationship between the WTO, member states and NGOs (WTO 1996a). While this decision recognised the need to improve the transparency of the WTO to NGOs and citizens, it stipulated that given the unique nature of trade negotiations, NGOs should *not* be directly involved in the work of the WTO and that it is incumbent upon member states to consider the public interest in regards to trade policy-making. Specifically, the decision directed WTO member states to provide citizens with sufficient information about WTO activities, to essentially act as conduits for citizens and other non-state groups to the WTO. The decision also instructed that contact between NGOs and chairpersons of WTO councils and committees "shall be in their personal capacity unless that particular council or committee decides otherwise" (WTO 1996a).

The General Council's decision regarding NGOs also specified a public relations role for the WTO Secretariat. It instructed the WTO Secretariat to make de-restricted WTO documents, such as reports of dispute panels, trade policy review reports and summaries of proceedings of the WTO's various committees, more promptly available on the WTO website in all three official WTO languages (English, French and Spanish). It was also agreed that the WTO Secretariat would host public symposia on WTO-related issues, develop arrangements to receive and disseminate information that NGOs wish to make available to interested member states, and respond to NGO requests for general information and briefings on WTO activities.

Further, it was decided that for WTO ministerial conferences, the WTO Secretariat would establish an accreditation process for NGOs to attend, as long as their activities were "concerned with those of the WTO" (WTO 1996a). Even so, there was concern from some states prior to the inaugural Singapore conference that NGOs would have the right to participate in the conference, which resulted in the Secretariat replacing the word 'observe' with 'attend' in all official documents relating the conference (Payne and Samhat 2004, 112). At WTO ministerial conferences, accredited NGO are housed in an 'NGO Centre', with communication facilities and office equipment, often separate from the main conference site. NGO representatives are able to view only the plenary sessions via video conference or in an NGO gallery, as was the case for the

1998 Geneva ministerial when the NGO facilities were in the same location. This enabled NGOs to have informal interaction with governmental delegates and distribute materials. For all conferences, a representative of the WTO Secretariat briefs NGOs on the progress of negotiations.

Two years after the General Council issued the first set of guidelines regarding contact with NGOs, on 17 July 1998, WTO Director-General Renato Ruggiero announced an enhanced set of initiatives, albeit within the framework of the 1996 guidelines. These new initiatives included a program of regular briefings for NGOs on the work of WTO committees and working groups; the provision of a list of documents, position papers and newsletters submitted by NGOs to be made available to member states on demand; and a section of the WTO website devoted to NGO issues. In announcing the new initiatives, Ruggiero stated that the onus was still on WTO member states, rather than the WTO, to establish relations with NGOs. Similarly, while the Secretariat was granted some flexibility with respect to consulting with NGOs, other issues were not resolved. These included opening dispute settlement hearings and other WTO meetings to NGOs and the general public, which remained dependent upon the approval (by consensus) of member states.

Following the fierce public opposition to trade liberalisation and the WTO expressed at the 1999 Seattle Ministerial Conference, the WTO established an annual WTO public forum, aimed at NGOs, academics, WTO members, and the business community, to discuss the challenges for the multilateral trading system. The WTO Secretariat has invited NGOs and other types of organisations to submit topic proposals for sessions in line with their particular interests, which the NGOs then host. Since its inception in 2000, the WTO website has explained that “the WTO Public Forum has become one of the most important platforms for dialogue amongst the stakeholders of the multilateral trading system. It is now a significant feature of the international calendar” (WTO 2007).

The trend toward greater openness and transparency at the WTO was further progressed at the 2001 Doha Ministerial Conference. The Doha Declaration contained the following pledge:

While emphasizing the intergovernmental character of the organization, we are committed to making the WTO's operations more transparent, including through more effective and prompt dissemination of information, and to improve dialogue with the public (WTO 2001a).

In line with this statement, on 14 May 2002, WTO members agreed to further relax the rules for de-restricting official WTO documents (WTO 2002). Although in 2001, some 65 percent of the more than 21,000 WTO documents were publicly available, the de-restriction procedures had been continually criticised by NGOs and other commentators for being too slow. In response, the May 2002 decision reduced the time period for de-restriction from the previous nine months to an average of six to twelve weeks. Henceforth, it was decided that the majority of WTO documents would be freely available from the outset.

In sum, the WTO's mechanisms for engagement with civil society consist of five core elements. These are:

1. NGO attendance at the biennial ministerial conferences (as spectators not participants);
2. WTO-organised issue-specific NGO dialogues and briefing sessions;
3. the annual WTO public forum (since 2000);
4. informal day-to-day contact between the WTO Secretariat and NGOs; and
5. WTO website space for NGOs, including NGO position papers, community e-forums and video debates (WTOc).

Since taking office in 2005, WTO Director-General Pascal Lamy has frequently utilised the organisation's website to reach out to NGOs, for example, making himself available for 'chat events' (WTOd). For the Hong Kong Ministerial Conference, he even uploaded his 'conference diary' outlining his view of the meeting's progress (WTO 2005a). In line with the emphasis on web-based communication with NGOs and the general public, the WTO secretariat upgraded the WTO website in 2006, based upon input from the public via online surveys.

Since its establishment in 1995, the WTO has certainly made advances in its transparency, with the level of information accessible to the public having steadily increased. However, NGOs and other non-state actors have been kept at arms-length, largely due to the distinctive nature of trade negotiations (in terms of legal complexity, secrecy and bargaining processes), not to mention the consensus decision-making procedures, which require that all members agree that NGO formal access to the WTO be increased. This 'exclusion' of NGOs from the WTO's decision-making procedures has attracted a great deal of attention from NGOs and academic commentators alike.

NGOs as democratising agents? The WTO-NGO literature

The shortcomings of the WTO's provision for contact with NGOs – combined with the expansion of trade liberalisation, secretive decision-making processes and concerns that some member states fail to balance economic interests with social justice and environmental issues – has fostered a small but dedicated literature debating the merits of allowing NGOs greater participation rights. The major theme concerns how the participation of NGOs at the WTO might rectify some of the organisation's 'democratic deficits' (Bellman and Gerster 1996; Marceau and Pedersen 1999; Trebilcock and Howse 1999, 509-510; Scholte *et al.* 1999; Wallach and Sforza 1999; Charnovitz 2000, 2002 and 2004; Atik 2001; Loy 2001; Petersmann 2001; Esty 2002; Wilkinson 2002a, 2002b and 2005; Howse 2003; Tuerk 2003; van der Ven 2003; Lacarte 2004; Nanz and Steffek 2004; Payne and Samhat 2004; Wallach, Woodall and Nader 2004; Willetts 2004).

However, the argument that increasing NGO input at the WTO could improve WTO decision-making has generated a response from those concerned that that presence of NGOs would compromise international trade negotiations (see Robertson 2000a, 2000b; Barfield 2001; Kellow 2001), as well as those who warn that that the participation of NGOs would only work to improve the reputation of the WTO without achieving any substantive benefits (Buchanan 2003; Ford 2003). This debate intensified following the collapse of the Seattle Ministerial Conference in 1999. Below, I explore the key criticisms levelled against the WTO's decision-making procedures and mechanisms for contact with NGOs. This is followed by an overview of some of the specific arguments for and against the formalisation of NGO participation at the WTO.

Critics of the WTO's provisions for contact with NGOs point to the inequities within the current arrangements. For example, Scholte *et al.* (1999) and Wilkinson (2005) argue that the WTO's NGO accreditation process for attendance at ministerial conferences provides privileged access for business associations over public interest NGOs and grassroots organisations from the developing world (see also Buchanan 2003). This is because trade liberalisation is seen to benefit business interests (in a general sense) and business actors are more readily accepted by both member states and the WTO Secretariat as having a legitimate interest in the work of the organisation. Indeed, it has been suggested that multinational corporations (MNCs) and other business groups seeking to expand their exports and investments abroad provide a powerful constituency for the WTO. These firms and their industry associations have influential voices in policy councils in domestic politics and strong interests in continued liberalisation (Keohane and Nye 2001a). Moreover, Charnovitz (2000) claims that in effect, nation-states engage in WTO dispute settlement processes on behalf of business interests. State-controlled access to dispute resolution procedures at the WTO is said to pose a significant constraint to the inclusion of issues not easily reconciled with national economic interests, such as social justice and environmental issues (Mason 2004).

According to several scholars, business influence over the rules of the international trade regime pre-dates the WTO. For example, Ostry explains that American MNCs played the key role in establishing the global trading system as it exists today as corporations were the only actors other than states allowed to influence the Uruguay Round negotiations and the transformation of the GATT into the WTO (2000; McMichael 2000, 466). Sell and May contend that pharmaceutical MNCs were instrumental in having international IP rules placed on the negotiation table during the Uruguay Round, leading to the eventual constitution of the Trade-Related Aspects of Intellectual Property Rights (TRIPS) Agreement (2005; Sell and Prakash 2004). Critics of TRIPS have observed that IP rights are a form of protection for business actors, illustrative of the WTO's treatment of business as a 'special' interest group (Wai 2003). Meanwhile, Tuerk (2003) claims that corporations based in developed countries play a major role in determining countries' market access requests for trade in services liberalisation under the WTO's General Agreement on Trade in Services (GATS).

In addition to the privileged role of business at the WTO, the organisation's focus on Internet-based communication as the major tool for contact with NGOs is seen as problematic. Wilkinson argues that it benefits resource-rich international NGOs, but neglects small grassroots organisations, especially in developing nations, which have only limited access to the Internet (2005). The WTO's utilisation of its website is thus said to underscore the organisation's focus on responding to 'noisy' NGOs based in developed countries (especially following the Seattle conference) rather than engage with a broad cross-section of NGOs. It has therefore been alleged that relations between the WTO and civil society have reinforced global structural inequalities in world politics (Wilkinson 2002b). In addition, scholars have also criticised the absence of permanent NGO accreditation for ministerial conferences and other symposia as well as the lack of a dedicated civil society liaison committee (Charnovitz 2002 and Scholte *et al.* 1999). Most critics have thus dismissed the WTO's 'overtures' to civil society as a public relations exercise designed to limit criticism of the organisation in the wake of the failure of the Seattle ministerial in 1999.

The WTO's preference for members to deal with NGOs at the national level has also been criticised. The WTO's accountability to citizens, through their respective national governments, is said to be too indirect, which prevents adequate public scrutiny of the organisation's decision-making processes and policies (Wilkinson 2005). Charnovitz (2004) argues that this indirect accountability is a particular problem for citizens of undemocratic nations, who make up a large proportion of WTO members. Compounding this 'democratic deficit' is the claim that nations are constrained to join the WTO and must commit themselves to alter their laws and regulations to align with the international trade regime (Scholte *et al.* 1999). Although international governance is dependent on national ratification, Nanz and Steffek state that "non-elected experts negotiate the WTO's everyday norms and standards", while the powerful dispute settlement process is deemed to provide the institution with some relative autonomy from, and power over, the governments that subscribe to it (2004, 317).

Some commentators have also been highly critical of the procedures and rulings of the WTO's DSB. During the 1990s, the GATT/WTO attracted the ire of environmentalists with some controversial DSB decisions that ruled against the application of discriminatory tools against imported goods on the basis of their production techniques. In 1991, GATT ruled against a US ban on imported tuna harvested by methods that killed dolphins, and in 1998, the DSB ruled against a US law that protected sea turtles and therefore prohibited the importation of prawns harvested using methods harmful to these creatures. These controversial rulings have led to claims from more radical environmental groups that trade liberalisation and environmental protection are incompatible and that the WTO should be abolished. More moderate environmental NGOs and some scholars have called for the DSB process to be opened up to allow NGOs to contribute by providing evidence and outlining their own interpretations of the relevant rules (Trebilcock and Howse 1999, 409-510; Howse 2003). Indeed, this has begun to take place with the DSB now

accepting both solicited and unsolicited submissions by NGOs, though formal legal standing remains confined to states.

The WTO's decision-making procedures have been widely criticised in terms of their democratic legitimacy and the level of secrecy. In particular, the Green Room consultative process, as noted above, has been labelled as undemocratic and to the disadvantage of resource-constrained developing countries. Given these constraints, many developing countries cannot afford to staff their Geneva offices or obtain staff with the appropriate level of expertise. Further, the staff that are in place must often represent their nation at a number of international organisations in Geneva.

The WTO has attempted to respond these issues in a number of ways. Various WTO committees and meetings have offered resources and proposed strategies to enhance LDC participation and improve transparency of trade negotiations, while wealthy WTO member states periodically donate funds for capacity and technical assistance (see WTOe; Payne and Samat 2004, 107-109). Procedural improvements such as timely circulation of reports and advance notice of informal consultations were new elements agreed upon at Doha in 2001, with the aim of improving LDC participation. However, NGOs and scholars charge that these responses have either been poorly implemented, or do not go far enough (Scholte *et al.* 1999; Charnovitz 2004; Nanz and Steffek 2004).

Given the range of criticisms directed at the WTO's decision-making procedures and its provisions for contact with NGOs, a major element of the WTO-civil society literature concerns the potential benefits of boosting NGOs participation at the organisation. Several NGO proponents suggest that these organisations are ideally placed to rectify the WTO's accountability and legitimacy issues. It is considered that NGOs may improve the quality of policy outcomes to reflect social and environmental realities, as well as reformulate priorities to better address popular needs rather than elite special interests (see Goodman 2002: xvii).

Nanz and Steffek for example, state that external transparency at international organisations is necessary for informed political debate. They advocate the development of a 'global public sphere' in which civil society plays a key role (2004, 328). The formalisation of NGOs at the WTO therefore is said to generate alternative perspectives on the issues thereby forcing the organisation to explain, clarify and reconsider its policy positions (Scholte *et al.* 1999). In this respect, Esty views the role of NGOs as 'intellectual competitors' (1998, 9). Charnovitz concurs, stating that the participation of NGOs may improve WTO decision-making by injecting new energy, ideas and values and that "[i]deas are weighted not by how many people hold them but their scientific or philosophical merit" (2004, 681). Charnovitz additionally advocates a participatory role not only for NGOs but also other inter-governmental organisations and national parliamentarians (2004).

For Tuerk (2003) and van der Ven (2003), the most promising aspect of NGO participation at the WTO is their capacity to improve the status of developing countries at the WTO by providing technical expertise and information services to address problems related to non-transparent decision-making processes (see also Scholte *et al.* 1999; Payne and Samat 2004). They claim that the involvement of NGOs in trade policy discussions at the WTO may improve policy outcomes given that NGOs can provide important data and analysis useful for policy formulation, implementation and review.

In contrast, only a small number of scholars question the benefits of increasing NGO participation at the WTO, arguing that 'opening up' the WTO to NGOs would compromise, rather than enhance, the decision-making process (Robertson 2000a, 2000b; Barfield 2001; Kellow 2001; Wolf 2001). These scholars essentially state that NGOs and their academic 'cheerleaders' greatly overstate the power of the WTO by portraying it as a monolithic body, rather than constituted by its member states. These scholars question the accountability and representativeness of NGOs themselves. For example, Robertson states that "most NGOs are run centrally by small powerful elites and are unaccountable to their societies" and that "their political stances are often disguised by well-meaning objectives" (2000a, 4). In relation to NGOs in global governance generally, William DeMars questions the desirability of the power and influence of citizen organisation into NGOs *vis-à-vis* other types of citizen organisations such as labour unions, governments or nationalist movements, many of which have more transparent and structured lines of accountability and representation (2005, 22).

Another concern, expressed by Kellow, is that permitting NGOs to participate in WTO policy processes would allow some NGOs not one but *two* opportunities to influence international trade policy: via their own nation-states in the first instance; and directly at the WTO (Kellow 2001). In relation to NGOs based in Europe however, direct participation at the WTO would allow NGOs not two but *three* opportunities for input. Given that EU member states and the European Commission are WTO members in their own right, European NGOs already lobby at the national and regional levels in regard to WTO issues. Allowing NGOs to contribute directly at the WTO would potentially give European-based NGOs an even greater advantage over those NGOs from the global South. Kellow also makes the point that NGOs would need to accept greater responsibilities in terms of accountability if they are to gain greater rights in international policy processes; he contends that there should be "no representation without taxation" (2001, 77). Thus, on the basis of the uniqueness of the trade negotiation process, equity concerns, and questions surrounding their accountability and representativeness, these critics maintain the NGOs should be kept out of the WTO decision-making process.

Another set of scholars reject the incorporation of NGOs at the WTO due to the embedded power structures within NGO networks, and their opposition to neoliberal institutions more generally. From a critical, Gramsci inspired perspective, scholars such as McMichael (2000), Wilkinson

(2002a; 2002b; 2005) and Goodman (2002) question the capacity of neoliberal institutions to ever deliver equitable policy outcomes, pointing to the dominance of elite interests in international level economic policy making. Specifically, the WTO is viewed as a flawed institution dominated by business interests and powerful states seeking to advance capitalist hegemony. As McMichael contends, the establishment of the WTO should be seen in context as part of “the corporate attempt to secure global market rule, framed by a pervasive discourse of neoliberalism” (2000, 466). These critics focus upon the hegemonic and paradigmatic power of dominant states and economic liberalism, and as a consequence they are cautious about advocating an enhanced role for NGOs within such a framework, fearing that NGOs would be co-opted. In any event, this perspective already views most international NGO networks as reflective of global structural inequalities. Instead, critical theorists advocate a different strategy for greater global economic equality: the fusion of local autonomy with universal norms, to be simultaneously pursued transnationally through the development of a global civil society, and locally through the defence of grassroots autonomy (see Goodman 2002, xxi; Buchanan 2003; Ford 2003).

In summary, the key debate within the WTO-NGO literature centres on the democratising potential of NGOs for the WTO. NGO proponents argue that opening up the WTO to NGOs would boost the WTO’s legitimacy and alleviate its ‘democratic deficits’. Alternatively, opponents question the representativeness and accountability of NGOs themselves and highlight the need to preserve the unique nature of the international trade negotiation process. Meanwhile, critical theorists highlight the power structures embedded in the WTO and question the capacity of NGOs to rise above such structures. While the democratising potential of NGOs for the WTO is an important theoretical discussion, an unintended consequence of this focus is that there has been little systematic inquiry into the current impact of NGO campaigns on the WTO or how NGO activity contributes to the international trade negotiation process and whether it supports or challenges this regime. It is in this direction that this thesis attempts to advance the WTO-NGO literature. Below, I briefly survey some of the activities currently and routinely undertaken by NGOs in relation to the WTO.

NGOs in international trade politics: a growing trend

In spite of the limitations on their formal participation at the WTO, a vast number of different types of NGOs, ranging from business associations and MNCs to environmental, human rights, religious, and development organisations are actively engaged on international trade issues and the WTO. Evidence about the extent of NGO activity in this area is apparent in the number and range of international NGO campaigns directed at the WTO. Indeed, a number of NGO campaigns have been directed against specific WTO agreements. These include the campaign against GATS, as well as those campaigns that have targeted aspects of the WTO’s agriculture agreement, including Oxfam International’s high-profile ‘Make Trade Fair’ and ‘Rigged Rules and Double Standards’

campaigns, and the 'Bite Back: WTO Hands Off Our Food' campaign (regarding genetically modified foods). Meanwhile, NGO activity under the umbrella of 'fair trade' also seeks to highlight inequities in the WTO's rules and in many respects, represent a symbolic ethical counterpoint to the current operation of international trade.

Several NGO campaigns have been directed at preventing progress at WTO ministerial conferences. The 'WTO - Shrink or Sink! The Turn Around Agenda' campaign aimed to prevent launch of the Millennium Round of trade negotiations at Seattle in 1999, while the 'No Deal is Better than a Bad Deal' was the campaign slogan of the NGOs attempting to stall progress at both the Cancún and Hong Kong ministerial conferences in 2003 and 2005 respectively. Other campaigns have advocated new WTO agreements in the areas of labour and environmental standards.

The number of NGOs that sought accreditation to attend WTO ministerial conferences provides further evidence that an increasing number of NGOs are active on international trade issues. Table 2.3 below reveals that the WTO's formal participation mechanisms have not posed a deterrent to the increasing number of NGOs applying to attend the biennial WTO ministerial conference, though these figures include NGOs representing business and well as public interests. Indeed, the table shows that while only 108 NGO applied in 1996, this figure steadily rose to 1065 for the 2005 Hong Kong Ministerial Conference.

Table 2.3: Number of NGOs accredited to attend WTO ministerial conferences

Year	WTO ministerial conference location	Number of accredited NGO observers ¹
1996	Singapore, Republic of Singapore	108
1998	Geneva, Switzerland	153
1999	Seattle, United States	776
2001	Doha, Qatar	651
2003	Cancún, Mexico	795
2005	Hong Kong, China	1065

Source: WTO.

¹ The number of NGOs accredited to attend each ministerial varies from the number that actually attended.

Yet another avenue pursued by NGOs (and actively encouraged by some states) is to lobby for a place on official national delegations to WTO ministerial conferences. For example, Ddamilura and Halima (2003) describe how the governments of Kenya and Uganda established multi-stakeholder advisory committees on trade policy and the WTO, which led to NGOs becoming part of national delegations to WTO ministerial conferences. At the Singapore Ministerial Conference, NGOs were accredited to the official government delegations of the US, Canada, New Zealand, Denmark, Norway, Egypt, Tunisia, Burkina Faso and South Africa, giving them important access to government briefings and government officials (O'Brien *et al.* 2000, 89). And at the 1999 Seattle Ministerial Conference, NGO representatives were present on the government delegations of the US, Norway, the United Kingdom, Denmark, the Netherlands, the EU, Kenya and Sweden, to mention but a few (Trades Union Congress 2000, 117; Anner 2001; Coulby and Ndrangu 2001, 4; Ahnliid 2002, 11; Payne and Samat 2004, 113). Even though their access was dependent upon states, the admission of NGOs via national delegations has offered selected NGOs an alternative route for gaining some access to the WTO decision-making arena.

Overall, this brief, preliminary evidence of increasing NGO engagement with international trade issues and the WTO aligns with the general increase in the numbers of international NGOs in recent years (see Boli and Thomas 1997, 1999; Union of International Associations 2004-2005). Tables 2.4, 2.5 and 2.6 below denote the existence of a large number of international NGOs and offer a breakdown of their different types. Precisely, they show that as of 2004, the total number of international NGOs was 7261. Of these, 36 were federations of international organisations, 474 were universal membership organisations, 1075 were intercontinental membership organisations while the majority, 5676, were regionally-oriented membership organisations. Table 2.5 illustrates the extraordinary growth in international NGOs over the past century and according to type from 1985. While in 1909 there were only 176 NGOs operating internationally, this figure rose to 5825 in 1999. Table 2.6 details the changes in issue-focus of international NGOs from 1983 to 2000. Though there are no figures for NGOs active on international economic policy issues, it is possible that any number of NGOs devoted to any of the issue areas listed could potentially be involved in trade issues given that international trade liberalisation intersects with so many of these issue areas. In this respect, it is also interesting to note that from 1983 to 2000, the percentage of multi-issue organisations increased from 12 percent to 17 percent.

Table 2.4: Number of international NGOs by type (2004)

Type	No.	%
A. Federations of international organisations	36	0.50
B. Universal membership organisations	474	6.53
C. Intercontinental membership organisations	1075	14.81
D. Regionally oriented membership organisations	5676	78.17
Total	7261	100.0

SOURCE: Union of International Associations 2004-2005, 1697.

Table 2.5: International NGOs by year and type (1909-1999)

Type	1909	1951	1964	1972	1985	1991	1993	1995	1997	1998	1999
A	-	-	-	-	43	39	39	38	39	37	37
B	-	-	-	-	397	427	437	486	485	483	484
C	-	-	-	-	796	773	783	1001	997	1074	1057
D	-	-	-	-	3440	3381	3571	3596	4064	4172	4247
Total	176	832	1470	2173	4676	4620	4830	5121	5585	5766	5825

SOURCE: Union of International Associations 1999-2000, 2357.

Table 2.6: Issue focus of international NGOs

Issue Focus	1983 N=348 (%)	1993 N=685 (%)	2000 N=840 (%)
Human Rights	26%	28%	25%
Environment	12	18	17
World Order/Law/Language	24	16	10
Peace	11	12	11
Women's Rights	7	9	10
Development	4	7	10
Multi:Global Justice/Peace/Env.Sustainability	4	4	11
Self Determination/Ethnic Unity	7	4	2
Right-wing	---	2	2
Multi-issue organisation	12%	11%	17%

SOURCE: Smith 2001 in He 2004, 230.

In explaining the rise of NGOs at the international level, most commentators point to rapid leaps in communication technology and affordable international travel (Alger 1997; Cohen and Rai 2000). However, the growing number and range of NGOs operating beyond the level of the state is also a product of the increasing number of policy issues that are dealt with multilaterally by international organisations (Reincke 1998; Tarrow 2001). As Thomas Risse states, the higher the level of institutionalisation in a given issue area, the greater the impact of transnational actors (2000, 27). In relation to the WTO, a key factor in understanding the increasing numbers of NGOs engaged with trade issues is the evolution of international trade governance. The transformation of the GATT Secretariat into the WTO (a new and permanent institution with an expanded mandate and effective regulatory and judicial processes); the progress in multilateral trade liberalisation; and the growth of bilateral and regional free trade agreements (FTAs); has served as a magnet for NGOs concerned with a wide range of trade-related issues.

Ultimately, Dunoff was correct when in 1998, only three years after the creation of the WTO, he recognised that the preoccupation within much of the WTO-NGO literature with the barriers to NGO participation at the organisation does not represent current practice, since it overlooks the

ways in which NGOs already contribute to trade politics at the WTO (1998, 434). As outlined above, increases in the number of NGOs contesting international trade policy through campaigning, NGO attendance at WTO ministerials and evolving relations between NGOs and WTO member states, reveal that NGO activity external to the WTO may be of growing significance for the international trade regime. As a consequence, it is necessary to understand a great deal more about NGO activity in relation to the WTO and its impacts on the governance of international trade.

Because much of the WTO-NGO literature reveals little about the current role of NGOs in international trade politics, the remainder of this chapter investigates the general literature on NGOs in international politics in order to provide a more solid theoretical basis for understanding the relationship between NGO activity and the governance of the international trade regime.

Casting a wider net: perspectives on NGOs in international politics

Beginning in the late 1980s, the literature on NGOs in international politics has proliferated in line with the focus on norms, values and identity in the international relations discipline under the rubric of constructivism. However, the beginnings of the literature on non-state actors in international relations can be traced back to the early 1970s. In 1971, Keohane and Nye edited a special issue of the journal *International Organization* on 'Transnational Relations and World Politics', which spearheaded an important debate about the emerging significance of non-state actors in international politics. In this issue, they challenged the dominant realist paradigm in international relations in which all actors other than nation-states are regarded as peripheral. In attempting to initiate a new liberal, pluralist framework for understanding world politics, Keohane and Nye (1972; 1977), along with Samuel Huntington (1973) and James Rosenau (1980), claimed that in addition to nation-states, non-state actors operating in the global sphere, such as labour unions, MNCs, religious organisations (the Catholic Church), and revolutionary movements, should be considered significant if they participate in political relationships autonomously from governments.

Though neorealists such as Kenneth Waltz (1979) attempted to dismiss the relevance of non-state actors *vis-à-vis* nation-states, the debate spearheaded by Keohane and Nye nonetheless marked the beginnings of an ongoing discussion about the impact of non-state actors in international politics. It spawned the literature on international regimes (Krasner 1982; Young 1982), epistemic communities (Haas 1990, 1992), and examinations of the role of non-governmental activist groups, or pressure groups, in international politics (Willetts 1982, 1996; Risse-Kappen 1995). This, in turn, led to the new research agenda on NGOs as 'sovereignty-free actors' working for the public interest or 'common good', which signified the emergence of social constructivism as a major new perspective in the international relations discipline (Wendt 1987; Kratochwil 1989;

Rosenau 1990). Among the major catalysts for the interest in NGOs and civil society as normative agents in international politics was the supposed role of new ideas in bringing an end to the Cold War (Thomas 2001) and the associated growth of non-governmental civil society groups in Eastern Europe (Mendelson and Glenn 2002). The fundamental question that continues to guide the NGO research agenda was articulated by Peter Willetts back in 1982: how do “small, overworked and under-funded NGOs with little formal authority manage to oversee changes in the practices of nation-states and international organisations?” (1982, 24). In regard to the major issue-focus, most research has centred on the activities of NGOs and other non-state actors in regard to human rights violations (Sikkink 1993; Klotz 1995; Keck and Sikkink 1998; Price 1998; Joachim 2007), environmental policy (Haas 1990, 1992; Wapner 1995; Princen and Finger 1994; Newell 2000; Humphreys 2004), and social/economic justice (Smith, Chatfield and Pagnucco 1997; Smith and Johnston 2002; Goodman 2002; della Porta and Tarrow 2005).

A number of theoretical approaches have been adopted in an attempt to understand the varied roles of NGOs in international politics. Chief among these are governance perspectives, constructivist perspectives, and global social movement perspectives. Though they share common concerns across key issue areas, each perspective focuses on different aspects of NGO activity. Governance approaches primarily view international NGO activity as a response to the transferral of an increasing number of policy issues from national to multilateral arenas. This perspective draws upon neoliberal institutionalism, exemplified by Keohane and Nye (1977), viewing NGOs and other non-state actors as contributors to the operation of international regimes. Alternatively, constructivists focus predominantly on the role of NGOs as agents of moral values that work to disseminate norms and ideas with the power to ‘reconstruct’ state interests and thus affect international institutions. Global social movement scholars, informed by both social constructivism and institutionalism, examine how global social movements are constituted and maintained, and attempt to map the processes surrounding norm development, dissemination and diffusion.

It should be noted that neo-Gramscian scholars and other critical theorists have also contributed to the literature on NGOs in international politics. However, they adopt quite a different approach to the above perspectives, warning about the potential of NGOs to become co-opted into power structures. As such, critical theorists often differentiate between professional NGOs and supposedly more authentic grassroots organisations, focusing on, for example, the anti-globalisation protests and other attempts to ‘resist’ neoliberalism (McMichael 2000; Goodman 2002; Wood 2004; Starr 2005). Given that they are primarily concerned about the counter-hegemonic potential of transnational civil society activism, most Gramsci-inspired contributions do not reveal much about how NGO activity contributes to the operation of international institutions, especially those that underpin the neoliberal economic order. As such, I focus upon the governance, constructivist, and social movement perspectives on NGOs in international politics, the major insights of which are detailed below. I then explain why a governance approach,

informed by neoliberal institutionalism, is the most suitable framework for understanding the roles played by NGOs in relation to the governance of the international trade regime.

The governance perspective: NGOs in international policy processes

Governance approaches to understanding NGOs in international politics view NGO activity in the context of international policy-making (see Fox and Brown 1998; Kellow 2000; O'Brien *et al.* 2000; Ronit 2007). NGOs are treated as contributors to the international policy process rather than simply 'norm entrepreneurs' or international manifestations of domestic social movements. In this respect, governance-centred approaches provide a role for both norms and interests in understanding how NGOs impact decision-making at international institutions like the WTO. Indeed, the interests of nation-states, in the form of the economic gains to trade as well as a host of domestic political factors, are paramount in determining the negotiating positions of member states at the WTO. By emphasising the structural and interest-based factors alongside norms, identity and institutional practices, governance approaches allows for an understanding of how NGOs work strategically in their attempts to impact international decision-making.

With its foundations in the neoliberal institutionalist perspective in international relations, governance-centred approaches view the very presence of international organisations as fostering incentives and opportunities for NGO advocacy. As Keohane and Nye argue in *Power and Interdependence*, increasing international interdependence is contributing to the growth of trans-governmental coalition-building and political bargaining, which provides space for the growth of non-state actors beyond the nation-state (1977). In this way, international institutions are said to *facilitate* inter-state communication, consensus and coalition-building, from which there is a "spillover effect", leading to "the proliferation of international activities by apparently domestic agencies" (Keohane and Nye 2001b, 241). In this respect, Tarrow (2001, 15) likens international institutions to "coral reefs" to which non-state actors such as NGOs are drawn (see also Kellow 2000, 6). Indeed, the significant amount of work conducted by the UN in the areas of human rights, the environment and development has played a key role in fostering the growth of NGOs and activists in these areas (see Willetts 1996; for numbers of international NGOs involved in these issue areas see Table 2.6). This was also demonstrated through the discussion above on the rise of NGOs engaged with international trade issues and the WTO (see Table 2.3).

One very visible example of the way in which international institutions foster NGO activity is the growth of NGO 'counter-summits'. International meetings of NGOs, such as the World Social Forum (WSF), are often staged to coincide with the meetings of international institutions. The first WSF meeting in 2001 was timed to coincide with the annual World Business Forum in Davos, Switzerland. Yet since then, the WSF has evolved into a venue for exploring alternatives to neoliberal globalisation (Smith 2004, 415; Pianta and Silva 2003). Other counter-summits have shadowed meetings of the World Bank, IMF, and various UN conferences. With high-profile

meetings of international organisations providing the platform, counter-summits build links between NGOs, strengthen their mobilisation capacities, build knowledge of the policy issues, formulate alternative solutions, and attract the attention of the media (Pianta 2001).

However, international organisations also benefit from international NGO activity. NGOs can serve to boost their legitimacy, enhance acceptance of policy decisions and improve policy implementation (see Jacobson 2000). As Reinicke explains, effective global governance requires that governments “enlist the active cooperation of nonstate actors” (1998, 219). To harness these capabilities, international institutions establish engagement or consultation mechanisms for NGOs (such as those at the WTO discussed above) to maximise the benefits of NGO participation whilst minimising the costs. As stated on the World Bank’s website,

[b]y tapping the knowledge of specialized CSOs [civil society organisations] and giving voice to the poor by consulting with CSOs whose membership comprises poor people, the Bank can have a richer and more complete basis on which to base its decisions” (World Bank 2007b).

Similarly, Thirkell-White explains that the aim of the IMF in consulting with NGOs has been not only to boost the institution’s legitimacy but improve policy-making and implementation (2005, 251).

NGOs, due to their organisational flexibility, can also carry out work that international institutions and are ill-equipped to perform themselves (Risse 2002, 260). In the area of environmental standards for example, NGOs monitor states’ compliance with internationally-agreed rules, which is especially important in regard to environmental issues and human rights. NGOs can provide alternative sources of information that other states and international organisations may not have obtained as easily. NGOs have reported on Indonesia’s compliance with the tropical timbers regime for example, thereby creating disincentives for states to ‘cheat’ on internationally-agreed rules for preserving tropical forests. Further, institutions often ‘contract out’ various functions to the NGO and business sectors. The World Bank, for instance, lends between US\$15 and \$20 billion per year to developing countries to carry out various infrastructure projects, which effectively amounts to investment and business opportunities totalling approximately 40,000 contracts each year for both NGOs and business firms (World Bank 2007c). In this sense, NGO activity serves to facilitate the successful ongoing operation of various international regimes.

Essentially, it is the institutional arrangements, decision-making processes and informal practices of international institutions that condition interactions among governments and NGOs (Keohane and Nye 2001b), and thus structure the way in which NGOs attempt to realise their goals. Indeed, the increasing authority of international institutions has provided “a fulcrum for the formation of alliances of different state and nonstate actors” (della Porta and Tarrow 2005, 236), and these

interactions are evolving as global policy problems become increasingly complex (Reinicke 1998 and 1999-2000; O'Brien *et al.* 2000; Boehmer-Christiansen and Kellow 2002; Ronit 2007). Reinicke for instance argues that 'global public policy networks' comprising loose alliances among international organisations, governments, the business sector and civil society are emerging in order to manage knowledge, correct market and intergovernmental failures and broaden participation in international governance (1999-2000). However, less is known about how the growing role of NGOs in governance networks is affecting their strategies for realising their goals (but see Edwards and Hulme 1996; Hulme and Edwards 1997; Bob 2005; DeMars 2005).

Only a limited number of studies have adopted governance-centred perspectives to analyse the activities of non-state actors in contesting international economic policy making. Fox and Brown's 1998 volume, for example, traces the contention among NGOs, the World Bank and its member governments over NGO attempts to incorporate environmental values into the organisation's decision-making. Through a number of case studies, they examine the impact of transnational NGO campaigns directed at the major donor governments that fund World Bank projects in developing nations, as well as the degree to which NGO action has impacted the institution. Fox and Brown demonstrate that the institutional structure of the World Bank and the interactions between World Bank 'insider reformists' and NGOs were integral factors in facilitating organisational change and the improved recognition of environmental issues (1998). In particular, the power imbalance in favour of donor nations at the World Bank proved a political opportunity for the NGO campaigners. The success of the NGO campaign against the World Bank's Arun III dam project in Nepal during the 1990s was dependent upon NGOs from developing countries working with local NGOs to gain the support of the World Bank's US Executive Director. Continued NGO pressure on the World Bank; the dissemination of proposals for smaller scale alternatives; the publication of studies detailing the negative impacts of the dam; and NGO lobbying of other powerful Executive Directors led the German and Japanese governments to question the merits of the project (Fox and Brown 1998, 486-487). In 1995, the ongoing controversy and the political sensitivities generated by the NGO campaign led the incoming World Bank president to overrule the organisation's management to dismiss the project.

Fox and Brown's Arun III dam case study illustrates that governments (both local and national), private sector interests, and the institutional characteristics of the World Bank all played a part in conditioning the impact of NGO advocacy. Fox and Brown's interactive model, which explains how NGOs achieved influence at the institution, acknowledges that NGOs not only campaign independently to gain support for their goals, but foster productive links with nation-states to impact the policy process at the World Bank. In turn, Fox and Brown find that the degree to which states can reform the World Bank depends upon their level of support from outsiders including civil society and the governments of other nations.

Although Peter Willets argues that the power advantage of NGOs lies in their ability to mobilise legitimacy, which is dependent on their reputation for fighting for 'good causes' (1982, 24), William DeMars (2005) concurs with Fox and Brown that NGOs also need government support, or at least assent, to exert influence in international politics. He posits that NGOs should be seen as international institutions that are constituted not only by their principled normative mandates and "simplistic universal causal theories", but also their partners. According to DeMars, these partners are of two types: political partners may include governments and international organisations, while societal partners may comprise religious groups, MNCs, entrepreneurs or ethnic groups. The significance of NGO partners lies in the 'latent agendas' to which they attach to NGOs (DeMars 2005, 45). Essentially, DeMars explains that while NGOs seek to project moral values, the instrumental objectives of other actors can pose significant constraints and/or create opportunities for NGOs and that the more partners that NGOs can garner through the perception of shared objectives, the more likely that NGOs can affect international policy processes. The examination of NGO partners is indeed an important factor in assessing the impact of NGO activity, particularly where NGOs do not possess sufficient formal access to the international institutions they target.

In an important and often cited comparative study, O'Brien *et al.* investigated the emerging relations between global social movements (operationalised as NGOs) on the World Bank, WTO, and IMF. By lobbying for institutional reform and attempting to shift public opinion on global economic issues, the authors claim that NGOs are challenging these institutions to alter their agendas to better address the social impacts of their policies. In response to NGO campaigning, O'Brien *et al.* examined how the institutions have modified and assessed their motivations for engagement with NGOs as well as the significance of the emerging relationships (2000, 17-22). They found that the key factors determining each institution's response include institutional factors such as the *raison d'être* of the organisation; the institutional structure and culture; the role of the executive head; and instrumental factors including the vulnerability of the institution to NGO pressure in successfully implementing its policy agenda. Though it does neglect the role of relationships between NGOs and states, O'Brien *et al.*'s study is an important contribution to the literature on NGOs and international institutions in that it identifies some of the key institutional factors that condition the influence of NGOs in international economic policy arenas.

In summary, governance-centred approaches offer a pluralist view of international politics, permitting an understanding of how cooperative and antagonistic relations between NGOs, international institutions, governments, and other non-state actors shape the capacity of NGOs to affect international policy processes. As the selected empirical accounts outlined above demonstrate, NGO campaigning often involves the formation of alliances or partnerships with formal sources of power (nation-states); navigating an organisation's institutional structures; and being alert to political constraints or risks as well as opportunities. In taking into account the institutional characteristics and practices of international institutions, whilst retaining realist

insights about the role of power and interests, the governance perspective, as articulated here, provides a sound basis for analysing the role and impact of NGO activity at the WTO.

I now contrast the governance approach to NGOs in international politics with the constructivist and global social movement perspectives, explaining why these alternative perspectives are inadequate for investigating the role of NGOs at the WTO.

The constructivist perspective: NGOs as 'norm entrepreneurs'

In their efforts to demonstrate that NGOs, not just nation-states, are important actors in world politics, constructivist scholars such as Sikkink (1993), Klotz (1995), Price (1998), Khagram, Riker and Sikkink (2002), and Joachim (2007) have emphasised the significance of norms, ideas, and identity over state power and interests. In doing so, they have understood NGOs as 'norm entrepreneurs', who contribute to the creation of new identities that can override national identities, reconstruct national interests and affect international decision-making (Haas 1990, 1992; Sikkink 1993; Gordenker and Weiss 1995; Klotz 1995; Wapner 1995; Keck and Sikkink 1998; Price 1998; Risse *et al.* 1999; Florini 2000; Khagram *et al.* 2002; Joachim 2003, 2007). Some scholars go further, arguing that these new identities will eventually constitute a new form of international organisation – a global civil society – to rival states. In this vision, citizenship is no longer territorially confined, but based on a shared sense of morality or ethics (Falk 1995; Wapner 1995; Lipschutz 1996; Florini 2000; Anheier, Glasius and Kaldor 2001). These normative accounts elevate the status of NGOs in international politics at the expense of nation-states and, depending upon the issue at stake, they highlight the combative rather than complementary relationships between the two.

In focusing on the potency of principled-issue norms harnessed by NGOs *vis-à-vis* state power and interests, constructivist scholars have produced a substantial body of scholarship. A prominent strand is dedicated to understanding how NGOs work together in transnational advocacy networks in order to challenge human rights violations perpetrated by various nation-states. For example, Sikkink (1993) illustrated how, during the 1970s, NGOs mobilised international allies to generate political, economic and diplomatic pressure on the governments of Argentina and Mexico, to put an end their human rights abuses. Similarly, Audie Klotz (1995) examined the anti-apartheid NGOs that worked to project the civil rights movement in the US onto South Africa, ultimately contributing to the downfall of the apartheid regime. Richard Price, in 1997, detailed the role of NGOs in the international campaign to ban landmines. Exploring their role in issue generation; moral persuasion; network development; and 'norm grafting', Price argued that NGOs persuaded states that the military utility of landmines is overshadowed by their humanitarian costs (1997, 614). Though Price claimed that his article broke the mould by examining NGO activity in the area of international security, he too focused on how NGOs promoted the human rights rationale for banning landmines.

In the environmental issue area, Paul Wapner has highlighted that NGOs or “world civic activists” disseminate normative values that not only influence states and international organisations, but affect the behaviour of larger collectivities throughout the world (1995, 320). Using NGO campaigns targeting the environmentally damaging practices of MNCs as examples, Wapner contended that when certain values and ideas gain resonance, standards of conduct can shift and activists can persuade people and corporations to change their practices (1995, 312-313). In doing so, NGOs employ consumer activism tactics, such as boycotts and sensationalist media stunts, to alert consumers to undesirable MNC behaviour. Such activities are said to “transcend the civil sphere” from which they originate, resulting in widespread changes in social and MNC behaviour, eventually becoming officially cemented by changes in government policy (1995, 325). The key point that Wapner put forward is that NGOs can provide ‘governance without government’, an enduring theme of the literature on NGOs and other non-state actors (1995, 329; Rosenau and Czempiel 1992; Cutler, Haufler and Porter 1999; O’Brien *et al.* 2000).

In their seminal book, *Activists Beyond Borders* (1998), Keck and Sikkink employed case studies from both the human rights and environmental areas to develop their ‘boomerang’ model, describing the mechanisms through which NGO networks may affect the behaviour of nation-states. Specifically, the model explained how local or grassroots NGOs bypass their own undemocratic governments by alerting international allies of a national grievance, who in turn mobilise international consensus to generate global condemnation of a government, thereby pressuring the offending state to reform its practices (Keck and Sikkink 1998, 12). The focus on human rights continued in Risse *et al.*’s 1999 volume in which they argued that NGO and social movement activity was central in reducing the human rights violations of a number of developing nation-states in Eastern Europe, Africa, Southeast Asia and South America. These groups did so “by creating new issues and placing them on international and national agendas, providing crucial information to actors, and most importantly by creating and publicising new norms and discourses” (Sikkink 1999, 306). Risse *et al.* extended the boomerang model through their five-stage ‘spiral’ model explaining human rights change as a result of transnational NGO action. Comprising several ‘boomerang throws’, this model operationalised the process of norm dissemination and specified how international human rights norms affect domestic political and social structures (Risse *et al.* 1999, 17-35).

In addition to targeting individual nation-states and MNCs, constructivists also investigated the ways in which NGOs draw upon their moral authority to target international actors on a range of issues. Khagram *et al.*’s 2002 volume, for example, contained contributions from both scholars and NGO practitioners that compare and contrast NGO advocacy across the security, environmental, developmental and economic policy issue areas. Specifically, chapter authors deal with international women’s rights, NGOs and the World Bank, human rights violations in Chile, campaigns to reduce third world debt, the impact of NGOs in Indonesia, and the international

labour movement. Focusing on how NGOs 'reconstitute' the sovereignty of particular nation-states and the authority of international institutions, the editors explained that the role of NGOs in creating and disseminating new norms is delineated by 'international political opportunity structures', which include established international norms, institutions, and organisations. Despite their acknowledgement that structural factors and conditions affect NGOs in attempting to realise their goals, this aspect was not well integrated, with the primary focus being on NGO agency.

Though the constructivist approach is helpful for understanding how NGOs work to disseminate norms in world politics, it suffers from a number of shortcomings that limit its utility for examining the role of NGOs at the WTO. First and foremost, constructivist scholars downplay the role of power and interests, which are fundamental to politics at the WTO where states essentially attempt to balance the economic 'gains to trade' with domestic political imperatives. In claiming that the moral persuasion tactics of NGOs brought an end to South Africa's apartheid regime for example, Klotz (1995) did not adequately take into account the impact of the end of the Cold War in altering US interests in regard to South Africa's apartheid regime, nor did she explore the possible negative electoral consequences for US congressional representatives in *not* supporting regime change in South Africa. Instead, it is implied that the racial equality norm was significant enough to overcome any alternative interest-based motivations in regard to the apartheid regime. Further, the 'globalisation' of the racial equality norm is better viewed as an extension of a US domestic norm than a global coalescence, and is thus reflective of US power.

Likewise, Wapner implied that MNCs engaging in environmentally harmful production practices simply came to accept the moral rationale of NGO campaigners (1995, 327). However, a more plausible explanation is that the MNCs under attack from NGOs changed their production practices for instrumental reasons (reputation protection and profit margins) rather than a sudden sense of moral obligation. Even in Price's account of the successful international NGO campaign to ban landmines, these weapons are not central to the defence of most major states, though NGOs still failed to convince the US to sign-up to the new pact. Similarly, the nation-states that had their sovereignty 'reconstituted' by transnational advocacy networks (as Keck and Sikkink (1998) suggest), were relatively weak states, such as Argentina, Mexico and South Africa. In essence, constructivist scholarship is unbalanced: it highlights NGO agency in international politics at the expense of structural factors such as the power and interests of nation-states and MNCs.

Second, constructivist scholarship also fails to adequately detail how NGO relations with nation-states can both help and hinder NGO campaigns. This is curious given that nation-states and other public organisations, including the European Commission and World Bank are major sources of finance for NGO activity, especially in the areas of humanitarian aid, environmental issues, and development projects (Uvin 2000: 15; Imig and Tarrow 2001; Risse 2002: 260; DeMars 2005; Cox 2007). Though Keck and Sikkink's boomerang model does involve states and international institutions as the 'international allies' of local NGOs, little is said about the factors underpinning

the relationships between NGOs and supportive states. Will a state simply support a cause for its normative qualities, or because it aligns with (or at least does not run counter to) their own objectives? This is likely to depend upon the issue at stake and requires much more investigation.

Indeed, William E. DeMars (2005, 30) contests Keck and Sikkink's boomerang model of transnational action by showing that governments have the ability to instigate a 'bungie cord effect' whereby they manipulate and hamstring local NGOs in order to keep transnational NGOs at bay. This is discussed in relation to human rights abuses in Egypt where a number of factors have prevented local NGOs from 'throwing the boomerang', including Egypt's relations with other nation-states. In general, the constructivist scholarship emphasises how NGOs hold states to account rather than how cooperative relations between NGOs and particular states might assist NGOs in achieving their goals (Klotz 1995; Keck and Sikkink 1998; Risse *et al.* 1999; Smith and Johnston 2002). Therefore, many accounts of NGO norm entrepreneurship provide little assistance in understanding how NGOs might foster relationships with nation-states in order to affect international decision-making. This aspect of NGO behaviour is likely to be especially important for NGOs contesting international trade policy at the WTO where only states are allowed at the negotiating table.

The focus on human rights and environmental issues within the constructivist literature has also meant that scholars have viewed NGO and civil society activity as having a 'universalising' effect, whereby NGOs are primarily viewed as agents that create and disseminate universal norms and standards in these areas. However, in other issues areas, particularly international economic policy, it is equally, if not more, likely that NGOs will seek to defend national sovereignty from the 'intrusions' of multilateral economic agencies. Paul Nelson, who has examined NGO advocacy at the World Bank, concurs that a more flexible model is needed to account for NGO advocacy in the area of international economic policy to allow for variations in the relationships that NGOs cultivate with governments (and other political actors) in order to gain traction for their causes (2002, 389). International economic policy, particularly international trade policy, impacts upon a wide variety of other policy areas including human rights, the environment, development, and economic equality. A vast number of different types of non-state actors including those typically excluded from constructivist analysis, such as MNCs and business advocacy NGOs, are involved in framing these policy problems in myriad of ways and advocating solutions that can differ or complement those proposed by NGOs.

Finally, constructivist accounts of NGO activity in international politics fail to specify adequately the mechanisms through which norm dissemination translates into policy changes and developments at international institutions. In other words, the focus on norm creation and dissemination means that the constructivist literature is too detached from the international policy making process. In the same way that Paul Wapner explained that MNCs simply capitulated to NGO moral pressure (1995), accounts of NGOs as norm entrepreneurs imply that normative

consensus will somehow automatically result in policy changes at international institutions. Specifically, many constructivists pay insufficient attention to how issues raised by NGOs actually find their way onto the agendas of international institutions (especially those with membership restricted to states) and how these issues are dealt with once on the agenda. Combined with the neglect of state power, the focus on norm construction and dissemination renders the constructivist approach a partial account of how NGOs work to exert influence in international politics. For understanding the varied roles that NGOs undertake in the context of the international trade regime, the work of NGOs as 'norm entrepreneurs' should be understood as just one of the aspects of NGO activity and must be integrated with a focus on international trade policy making process.

Global social movements: sustaining transnational contention

While they also view non-state activists as agents of global norm diffusion and isomorphism, global sociologists have interpreted the growth in NGO advocacy and other types of activism as the 'scaling up' of domestic social movements beyond the level of the nation-state (Smith *et al.* 1997; della Porta, Hanspeter and Rucht 1999; Guidry, Kennedy and Zald 2001; Cohen and Rai 2001; Smith and Bandy 2005; della Porta and Tarrow 2005). Accounts of global social movements attempt to identify the factors, or more specifically, the 'mobilising structures' (see Tilly 1984), that underpin the growth of social movements beyond the state. In doing so, scholars such as Smith *et al.* (1997), Smith and Bandy (2005), and della Porta and Tarrow (2005) examine the stability and maintenance of global social movements, focusing upon the linkages between local and transnational social movement contention. Following the 9/11 terrorist attacks, a key concern has centred around the sustenance of global social movement activism, whilst avoiding violent confrontations such as those witnessed at the 'Battle of Seattle'. Some social movement theorists have broken off to focus on what they call the 'new' activism made up of networks of activists across multiple issue-areas, such as those that contested the US-led invasion of Iraq in 2003, rather than single issue-driven contention driven by professional NGOs (see Bennett 2005). Although this body of literature focuses on transnational collective action in the form of transnational protest movements, mass mobilisation and grassroots movements (rather than the activities of professional NGOs), it does offer some insights for understanding the role of NGOs at the WTO. These insights relate to the emphasis on the structures that underpin social movement activity at the international level.

Within the global social movement literature, scholars pay much more attention than constructivists to the divides among activists, especially between wealthy industrialised nations and those from developing and under-developed nations. Detailing how activists contest the growing trend towards economic globalisation, Jackie Smith and Joe Bandy for example, find that within coalitions of activist organisations, differences between groups of different sizes and types as well as those spanning class differences may be problematic for maintaining coalitions across borders (2005, 13). This concern is quite distinct from the constructivist view that emphasises the

shared norms and values, common goals, and functional relations between local and international NGOs who work together to build legitimacy for their causes. Accordingly, social movement scholars have criticised Keck and Sikkink's concept of the transnational advocacy network, which is said to obscure the level of contention among actors within the network, making them appear united and homogenous. On the contrary, it is argued that all actors within a network are concerned about the relative strength of their organisation, maintaining their independence and progressing their own agenda (Bandy and Smith 2005; Smith and Fetner 2007). In this respect, the social movement perspective is much more aware of the power structures and material interests at play within activist movements themselves.

Though they differ in their views on the level of contention within and between activist groups, several social movement scholars share with constructivists an optimistic view regarding the impact of the transnational activity of principled-issue actors. For example, Robin Cohen and Shirin Rai state that the transnationalisation of social movements has uncovered the potential for new forms of global politics with cosmopolitan dimensions (2000, 1). Smith and Bandy claim that activists are self-reflexive and may therefore avoid the replication of global inequalities within their networks; they also have the potential to transform power inequalities between states (2005). In doing so, Smith and Bandy outline a normative research agenda focusing on the factors that contribute to creating and maintaining effective coalitions: "research on transnational coalitions will allow us to identify strategies for managing internal tensions, building trust across borders, and developing strategies and organisations with greater global impact" (2005, 231-232). This focus has given rise to a body of work that attempts to understand the structures that facilitate and maintain global social movements across borders rather than how global social movements affect policy-making at international institutions.

Contributors to the global social movement literature have put forward a range of factors to help understand how global social movements are constituted and maintained. Drawing upon domestic social movement theory, Chadwick F. Alger (1997) points to the way in which issues of concern are framed (issue-framing); the domestic structures facilitating the growth of a movement (mobilising structures); the level of resources available; unity among activists; and the types of strategies and tactics utilised for contesting the issue at stake, also known as the 'repertoires of contention' (see Tilly 1984). Additionally, Alger (1997) states that the presence of *political opportunity structures* including international economic conditions, access to international institutions and relations between nation-states are significant structural factors that promote the consolidation of global social movements. Although Khagram *et al.* also discuss the international political opportunity structure as an important factor in constraining and enabling NGO networks in achieving their goals (2002), this concept is much more thoroughly investigated within the social movement literature (see also Kitschelt 1986; McAdam, McCarthy and Zald 1996; Tarrow 1996). Smith and Bandy additionally state that for activists contesting international economic policy, the presence of nationally-based movements and foreign movement allies (and the extent

of their similarities); governments or corporations that are open to change; mass public dissent; and the absence of international political conflict are also significant political opportunities (2005, 232-237). It is these types of structural conditions that are likely to be important, not just for the maintenance of global social movements, but also for professional NGOs seeking to realise their goals, regardless of the policy issue area on which they focus.

Though the global social movement literature usefully sheds light on the structural factors underpinning the development of social movements beyond the nation-state, it does suffer from some units-of-analysis problems. 'Global social movements' are relatively cumbersome units for investigating non-governmental activism, resulting in some difficulties in operationalising transnational activism. For example, in the Smith *et al.* (1997) volume, contributors discuss not just 'transnational social movements', but NGOs and transnational social movement organisations (TSMOs). Others, such as O'Brien *et al.* (2000), offer their work as a study of global social movements, yet focus on NGOs in their case studies. Quite often, the relationships between NGOs, TSMOs and global social movements are unclear. Further, it is uncertain as to whether the term global social movement accurately describes the transnational activity of activists. Indeed, Tarrow observes that the social movement concept has been employed too freely: many social movement theorists have simply applied the social movement concept to transnational activities that "would be more recognisable as lobbying, communication, and educational and service activity if they were observed at home" (2001, 10). Risse wades through this difficulty by distinguishing between formal organisations, like NGOs, groups of formal organisations like epistemic communities (see Haas 1990, 1992), and more loosely connected networks such as groups of individuals (2002, 255-256). Meanwhile, Tarrow (2001, 12) distinguishes between TSMOs and NGOs in regard to their behaviours, arguing that mass-based TSMOs tend to *rally against* particular states and international institutions, while NGOs engage in *routine interactions* with these same actors (see also della Porta and Tarrow 2005, 235).

In summary, global social movement scholars are more concerned with the maintenance of social movements beyond national borders and how they create and disseminate norms rather than how NGO activity affects international policy making. As such, they focus more on loosely connected groups and individuals around particular issues, such as the Iraq War and neoliberalism in general, rather than professional NGOs, which routinely engage with nation-states and international institutions. Nevertheless, in pinpointing the factors that sustain social movements internationally, this perspective contends that structural factors enable and constrain NGOs in attempting to further their goals via international policy processes. In particular, the 'political opportunity structure' provides a basis for understanding the external constraints and opportunities faced by NGOs in attempting to affect policy change at organisations such as the WTO, where decision-making procedures, rules and practices as well as states' interests and their domestic politics are all in play. As a consequence, the social movement perspective offers a more balanced perspective than that of the constructivists, which focuses unduly on NGO agency. Ultimately however, both the

constructivist and social movement perspectives share an overly optimistic view about the potential of activist networks to reconfigure power structures and state interests to achieve their goals (see Smith and Bandy 2005).

Overall, the constructivist and social movement perspective are valuable for understanding the how NGOs construct and disseminate norms, as well as the structures sustaining global social movements. But given this focus, neither provides a comprehensive framework for understanding the role of professional NGOs in regard to the international trade policy process. For the purpose of this thesis, only a governance approach that situates NGO activity in the context of the increasing trend to decision-making at the international level, taking into account both norms and interests, provides the scope to understand the roles that an increasing number of NGOs are undertaking in relation to the WTO and the operation of the international trade regime.

A governance-centred framework provides scope for an assessment of a range of agents (NGOs, states, international institutions) and structures (for example, WTO decision-making processes, states' interests, and conflicts and alliances between states) and how the interrelationships between NGOs and WTO member states might provide NGOs with leverage to affect WTO negotiations. With its roots in neoliberal institutionalism, this approach highlights cooperation (as opposed to anarchy) in international politics, which is achieved through rules, norms and institutions (Keohane and Nye 1977). It therefore accounts for the role of norms that shape aspects of the policy process including the formal rules, informal practices and patterns of bargaining among actors over the issues at stake. It allows for the incorporation of some of the most important insights developed by constructivists (the role of NGOs in generating normative consensus) and the social movement scholars (the role of political opportunity structures) into a framework that centres the analysis around the institutional site of contention at which state interests and NGOs' normative objectives may be complementary. As such, this theoretical framework emphasises that institutions and non-state actors, not just nation-states, matter in international politics. Additionally, it is important, given the institutional characteristics of the WTO and the policy issues with which it deals, that NGOs are viewed not simply as entrepreneurs and diffusers of norms, but as strategic actors in the international trade policy process.

Conclusion

In concentrating on the democratising potential of NGOs at the WTO and the inadequacies of the organisation's current mechanisms for engagement with NGOs, much of the literature on NGOs in the WTO context overlooks the role that NGOs currently play in international trade politics and how this role might affect WTO decision-making. Indeed, the rapid expansion of the NGO sector in recent decades; the increasing number of NGOs applying to attend WTO ministerial conferences; the growth of NGO-led campaigns directed at the organisation; and the presence of

NGOs on governmental delegations to ministerial conferences all reveal the chasm between the academic literature and the current practice of international trade politics. In particular, little is known about the nature of relationships between NGOs and member states or the impact of NGO campaigns on WTO decision-making.

Given the limited nature of the WTO-NGO literature, I explored the governance-centred, constructivist and social movement approaches to the study of NGOs in international politics in general in order to gain some insights about how NGOs contest international decision-making. Though offering important and in-depth accounts of how NGOs attempt to construct and disseminate norms at the international level, the constructivist and social movement approaches suffer from a number of limitations in terms of their applicability to NGOs at the WTO. The constructivist perspective does not account for the important role of interests and power structures within world politics and it highlights the antagonistic, rather than cooperative, relationships between NGOs and governments. The implication is that NGOs, through the mobilisation of transnational advocacy networks, can somehow rise above power politics “to reconstruct, re-imagine and re-map world politics” (Lipschutz 1992, 391).

Meanwhile, global social movement scholars focus on specifying the ‘mobilising structures’ that facilitate the globalisation of social movements and examine the factors that may sustain and strengthen social movements on a global scale. Although they take into account power structures and potential sources of disunity among activists to a greater extent than constructivists, the objective behind much of the global social movement literature is to understand more about the impediments to and opportunities for entrenching moral values and new norms rather than how NGOs affect inter-governmental debate and decision-making. Their interest in broad-based global social movement activism, rather than the activity of professional NGOs, means that like the constructivist literature there is only a limited investigation of how NGOs might work cooperatively with nation-states. This is a prominent factor in understanding how NGOs affect the WTO, a ‘states-only’ institution.

While the work of NGOs in generating global normative consensus is a significant aspect of what NGOs actually do in international politics, it is only a *partial* account of the role played by NGOs in international politics. There is a general lack of specification about how normative consensus affects the decision-making processes and outcomes at international institutions. In contrast, governance-centred approaches emphasise the importance of international institutions in promoting the involvement of NGOs in international politics and policy-making; indeed, it is argued that the growth of transnational non-state advocacy is largely due to “the resources, incentives and opportunities of international institutions” (Tarrow 2001, 15; see also Risse 2000). Additionally, a governance-centred perspective provides a basis for an examination of the interrelationships, and even partnerships, between state and non-state actors – all are viewed as participants in international policy processes. Indeed, the empirical accounts of Fox and Brown

(1998) and DeMars (2005) highlight the significance of the governments as political partners for NGOs in achieving their objectives. In contrast to constructivist accounts of NGOs, governance-centred perspectives also take into account the structures that NGOs must navigate in order to influence decision-making at an international organisation, such as an institution's organisational culture, decision-making processes and the relations between nation-states (O'Brien *et al.* 2000). Though the global social movement literature also considers these structural constraints and opportunities, their work is directed at a different end – the sustainability of global social movements.

It is clear then that in understanding NGO advocacy in the context of the WTO, a governance-centred perspective that takes into account norms, interests and institutional structures provides a valuable framework to begin theorising about the roles that NGOs play in the international trade regime administered by the WTO. Based on the insights derived from the governance-centred perspective on NGOs in international politics, the following chapter sets out the methodological framework for evaluating the impact of NGO campaigns on the WTO.

Chapter 3

METHODOLOGY: ASSESSING NGO ACTIVITY IN THE WTO CONTEXT

Introduction

The increasing number of NGO campaigns on international trade issues, coupled with the number of NGOs attending the WTO's ministerial conferences, suggests that NGO activity in relation to the WTO has increased over the past decade in line with the international expansion of the NGO sector more generally (Boli and Thomas 1997, 1999; Union of International Associations 2004-2005). This has occurred despite the fact that the WTO does not allow NGOs to formally participate at the WTO, and is unlikely to do so in the foreseeable future. Given that they cannot formally contribute to WTO decision-making, this raises some important questions:

- *What strategies or tactics do NGOs employ in contesting international trade issues and WTO decision-making?*
- *What roles do NGOs play in the international trade regime?*

This chapter outlines the methodological framework for the study to ensure that evidence and assessment of NGO activity in relation to the WTO is dealt with in a systematic manner. This is an essential requirement for any examination of NGOs because, as Betsill and Corell make clear, there is an unfortunate tendency in this area of scholarship to "look for any possible sign that NGOs made a difference in a given political process while ignoring evidence suggesting that NGOs had little effect" (2001, 69). In navigating these difficulties, I employ a comparative case study method, drawing upon the insights of Alexander L. George (1979).

The first part of this chapter justifies the adoption of a comparative case study method as the most appropriate for evaluating the role of NGOs in the international trade regime. The method provides scope to compare and contrast the campaign strategies and tactics that NGOs employ and understand the external conditions and other factors that mediate these strategies. Adhering to the research design prescriptions of the comparative case method, I then establish the scope of the study and define the key concepts employed. In doing so, I investigate the different ways in which non-governmental actors and NGO collective action has been conceptualised, arguing that a focus on *NGO campaigns* is the most useful way in which to approach NGO advocacy directed at the WTO. Drawing upon the NGO literature, I contend that NGO campaign activity can broadly be understood as 'mobilising support', which involves generating unity among relevant NGO communities and attempts to attract various WTO member states to the NGO cause. Further, NGO influence is conceptualised as impact on the international trade policy process at the agenda-

setting stage, rather than the decision-making or implementation stages of policy-making. Although NGOs are not permitted to contribute to WTO decision-making, I posit that their activities external to the WTO arena can affect the issues that WTO members address. The final part of the chapter introduces and justifies the selected case studies of NGO campaigns in the key areas of labour standards, foreign investment rules, and IP rules, and specifies the data sources utilised for the case study research.

Comparative case studies: the method of structured, focused comparison

Case study research is widely employed in social and political sciences and is recognised as a vital tool for systematically investigating and explaining complex social and political phenomena. As Arend Lijphart explains, there are several different types of case study method. These include, to name just a few, ‘interpretive case studies’ (using existing theory), ‘deviant case studies’ (to explain outcomes at odds with existing theory), ‘hypothesis-generating case studies’, ‘theory-informing case studies’, ‘single case studies’, and ‘plausibility probes’ (1971, 691-693; see also Eckstein 1975). While the various case study methods occupy an important place in social science research, none are as comprehensive, nor as rigorous, as the method of structured, focused comparison first articulated by George in 1979.

In his 1979 chapter in *Diplomacy: New Approaches in History, Theory, and Policy* edited by P.G. Lauren, George explained the utility of the comparative case study method, or what he referred to as the ‘method of structured, focused comparison’, and outlined how it is best executed. Put simply, George states that the method involves the presentation of each case study in general terms and variables – the ‘disciplined-configurative’ approach – to facilitate comparison and theory development, whilst circumventing the tendency to employ idiosyncratic terms (1979, 46-50). As Richard Rose elucidates, the use of the comparative method in political studies involves the presentation of “empirical evidence of some kind of an attempt to compare systematically and explicitly political phenomena” (1991, 439). Similarly, Robert Yin notes that a case study is a systematic inquiry that “investigates a contemporary phenomena within its real-life context, especially when the boundaries between phenomenon and context are not clearly evident” (2003, 13). In adopting this method, a researcher is required to understand ‘like phenomena’ as a class of events that can be systematically compared and contrasted leading to an improved understanding of the issues in question (George 1979, 45). In edited volumes on coercive diplomacy and deterrence, George illustrates that the method is ideal for dealing with a small number of case studies for which there exist several possible explanatory variables (George and Smoke 1974; George 1994).

Because the comparative case study method is used for theory development and not just for exploratory or descriptive purposes, the process of constructing the research design is

comprehensive. Indeed, the prescriptions of George (1979) and Yin (2003) about how to use the method encompass research design, data collection methods, data analysis and theory building. Setting up comparative case study research involves a series of tasks. These include reviewing the existing literature, conceptualising the research problem, specifying the outcome requiring explanation, and establishing the control variables for the case studies and the variables that comprise the theoretical propositions and framework of the study, case study selection and case study analysis (George 1979, 54-55). It should be noted that although this method utilises terms such as 'variable', which are more commonly associated with quantitative methodology, a qualitative case study approach considers research as an art as well as a science. In order to describe the comparative case study method in more detail, I now briefly examine the research design tasks associated with the comparative case study method in reference to NGOs and the WTO.

Analysing existing literature, conceptualising the research problem, and establishing variables

One of the most significant aspects of the comparative case study method is that it begins with a critical analysis of the existing literature. As George contends, existing theory has bearing on the aspects of the phenomenon that can be tested, refined or elaborated through case study research (1979, 54). This means that the researcher must first appreciate what has been achieved in a research field, as well as the aspects that have been neglected, poorly explained, lack empirical evidence or require theoretical refinement. This process allows for an understanding of the way in which research agendas, dominant approaches and contests between theoretical approaches have shaped (or misshaped) advances in a particular research field. This is especially important for studies of NGOs in international politics. As the previous chapter attests, much of the WTO-NGO scholarship debates whether NGOs should be accorded participant status at the WTO, rather than their current role and impact within the international trade regime. Additionally, the general literature on NGOs in international politics is dominated by constructivist and social movement approaches that have skewed the research agenda to neglect interests in favour of norms and identity, and emphasised understandings of NGOs as 'principled-issue' rather than instrumental actors. This evaluation process led to the development of two important research questions regarding how NGOs contest international trade issues and the role that they play in the trading regime (see Introduction to this chapter above). Having identified gaps in the literature, my adoption of a comparative case study method allows me to comment upon how existing theory might be enhanced rather than simply validating or rejecting it.

Following an analysis of the literature, a crucial aspect of the research design is the conceptualisation of the research problem and the specification of the outcome requiring explanation. These tasks set the parameters of the study and shape potential findings. They involve framing the research questions and defining and operationalising the key concepts appropriately. For this study, having already arrived at the key research questions by examining the existing

literature, a key step is to define the key concepts of 'NGO', 'NGO collective action' and the categories through which to examine NGO activity. There are several alternatives in this regard, each of which must be examined and assessed in order to arrive at the most suitable conceptualisation for responding to the research questions. Appropriately defining and justifying these concepts is a crucial part of the research design process, which is undertaken in the second part of this chapter.

Following the specification of the research problem and the conceptualisation of the key terms, the key explanatory factors need to be established. These are derived from the process of evaluating the current literature and the theoretical approach adopted (Yin 2003, 28). For this study, the outcome requiring explanation (the dependent variable) is the NGO role in the international trade regime, while the independent variables are essentially the key factors that enable and constrain the activities of NGOs within the international trade regime. These relate to activities of NGOs in contesting WTO decision-making, the relationships between NGOs and other actors including nation-states and MNCs (and the compatibility of their interests), as well as the decision-making characteristics of the WTO. Both the explanatory factors and the hypothesis inform the series of questions that need to be asked of each case. George explains that some explanatory factors (the 'control variables') should be held constant across the cases while others (the 'independent variables') can be allowed to differ depending on the research questions under examination (1979, 54).

Case study selection and theory development

Although Charles Ragin and Howard Becker (1992) point out that there is little consensus about what a 'case' is in social and political science, the essential characteristic of the method is that it limits attention to an *instance* of something (Babbie 2002, 292). More specifically, Gerring argues that "a case study is best defined as an in-depth study of a single unit (a relatively bounded phenomenon) where the scholar's aim is to elucidate features of a larger class of similar phenomena" (2004, 341). Until the 1970s, case studies in international relations primarily focused upon nation-states as the key units of analysis, reflecting the dominance of the realist perspective. However, the 'transnationalism' and 'interdependence' challenges spearheaded by Keohane and Nye (1972; 1977) facilitated the evolution of the method to allow for a comparison any type of political actor, institution or phenomenon (Eckstein 1975). Indeed, case study research is now widely used to examine international regimes (Young and Osherenko 1993), the international economic institutions (O'Brien *et al.* 2000), global social movements (Smith *et al.* 1997; Smith and Ayres 2002), interest groups (Kellow 2002) or NGO campaigns (Sell and Prakash 2004; Wapner 1995).

Regardless of the chosen unit of analysis, the case selection needs to have the capacity to test the theoretical proposition about the relationships between the independent explanatory factors and to

establish causation between the independent and dependent variables. Selecting appropriate cases therefore is a 'make or break' aspect of constructing the research design. As Lijphart explains, cases should be selected on the basis of their distinguishing features "to maximise the variance of the independent variables and to minimise the variance of the control variables" (1971, 164). In other words, cases need to be selected on the basis of their similarities and differences, where the differences should revolve around the variables of theoretical interest. Mackie and Marsh (1995) have labelled this 'most different' case study research; it allows a researcher to discover the common elements that hold explanatory power. In contrast, the 'most similar' approach is useful for isolating the key differences of each case and may lead to more focused analysis. The case study approach adopted in this study more closely aligns with the 'most similar' approach in that all three cases of NGO campaigns selected played roles at the agenda-setting stage of the international trade policy process.

There are some pitfalls stemming from the selection and use of cases. Historians warn, for example, that there may be a trade-off between description and explanatory power, whereby some of the detail is sacrificed for greater generality, particularly where a large number of cases are utilised (Mackie and Marsh 1995, 178; Ragin 1991). There is also the risk that a researcher will isolate an event from its historical context, which may have the effect of distorting the comparative analysis and this can occur in single as well as comparative cases (George 1979, 45). For example, in a single case study, Klotz (1995) examined the role of activists on bringing an end to apartheid in South Africa, only to neglect the larger historical context in relation to the end of the Cold War and its impact on relations between the US and South Africa as an explanatory factor. In contrast, a researcher may provide too much detail about the cases at the expense of the comparative analysis. The present study, which examines only three cases, is more likely to be subject to this latter risk (rather than sacrificing detail for generality). The best way through these pitfalls is via a well-planned research design.

The analysis and theory development stage of the comparative case study method is viewed as the most difficult in the research process (Yin 2003). In reaching this stage, a researcher must have provided appropriate definitions of the class of phenomena/events, treated each as type of scientific observation, and asked a standard set of questions of each case in order to compile comparable data (George 1979, 62). This enables causal patterns to be highlighted to contribute to valid and reliable theory-building (George 1979, 50).

Given the comprehensive, robust and sophisticated nature of the comparative case study method, with its capacity to provide new concepts, generate hypotheses, confirm, challenge, reformulate or further develop existing theory, it is an ideal method for understanding complex contemporary political phenomena such as how NGOs contribute to international trade politics. Indeed, the method offers a way to navigate through the complex normative values, institutional practices, external political conditions, and interrelationships between states, NGOs and the WTO – these are

all likely explanatory factors in understanding the role of NGOs in the international trade regime. The comparative case study method allows these factors to be disentangled and facilitates the identification and clarification of causal patterns and mechanisms.

Having outlined the key elements of the comparative case study method, I now draw upon these guidelines in defining the key concepts employed in this study, conceptualising NGO activity and explaining and justifying the selection of case studies of NGO campaigns directed at the WTO.

Conceptualising NGOs in international politics

Civil society and global civil society

There are several ways in which to conceptualise and define non-governmental advocacy organisations in international politics. Over the past two decades, the term ‘civil society’ has become increasingly well-used in international relations and political science as an umbrella term to describe the *sphere* in which these actors are said to operate. Civil society is usually defined as a public realm of voluntary, not-for profit civic association located above the level of the family and distinct from both the state and the market (Wapner 1995; van Tuijl 1999, 494; Anheier *et al.* 2001). From the early 1990s, the civil society concept developed into the new notion of *global* civil society, also known as international civil society or transnational civil society (Rosenau 1990; Falk 1995, 1999; Lipschutz 1992; Wapner 1995; Florini 2000; Anheier *et al.* 2001). Anheier *et al.* explain that global civil society is generally understood as a social sphere “above and beyond national, regional, or local societies” (2001, 3). Global civil society is said to consist of a broad collective of more or less formal organisations (Scholte *et al.* 1999, 109).

Perhaps because of its broad definition, a significant problem has emerged with the way in which the concept of global civil society has been employed in much of the international studies literature. Many have treated civil society normatively, viewing it not only as an institution and a set of relationships, but as Stiles explains, an *aspiration* (2000; see also Klotz 1995; Falk 1999; Price 1998; Kaldor 2003). As a result, scholars have emphasised civil society groups that pursue noble or virtuous causes (Klotz 1995; Wapner 1995; Price 1998; Keck and Sikkink 1998), while neglecting actors that pursue instrumental objectives. However, as Scholte *et al.*’s explanation of civil society makes clear, civil society groups pursue objectives that relate to both “*reinforcing or altering* existing rules, norms and/or deeper social structures” (1999, 109 emphasis added). Even though they have been relatively neglected in the civil society literature, business associations and terrorist groups cannot be excluded from the civil society category. Even though some of these groups, like Al Qaeda for instance, may be pursuing their goals via ‘uncivil’ means, they must nonetheless be treated as civil society organisations (Keane 2003). As Sell and Prakash assert, it is not theoretically or empirically sustainable to discriminate between actors in this manner, simply because all actors are constituted by both their normative and instrumental goals (2004).

Another difficulty with the term ‘global civil society’ is that it is frequently defined in opposition to nation-states. Indeed, many civil society scholars highlight civil society actors as challengers of nation-states and international organisations, rather than the ways in which civil society actors and states have worked together cooperatively to achieve shared objectives. As R. B. J. Walker explains, the nation-state is defined as the ‘problem’ and global civil society presented as the ‘solution’ (1994, 673-674). Others, such as Richard Falk, view global civil society as a force for ‘globalisation-from-below’ that can counter the ‘globalisation-from-above’ progressed by powerful governments and international institutions (1999). These understandings are too one-sided; civil society groups often support the activities of one state in a given issue area, while criticising the activities of others. Anti-whaling NGOs such as Greenpeace for instance, applaud and encourage the anti-whaling positions of states like Australia and the US while condemning the whaling activities of Japan and Norway. Indeed, nation-states and international institutions not only provide arenas and focal points for civil society activity, states actually facilitate the influence of civil society actors both domestically and internationally (Fox and Brown 1998; DeMars 2005). For example, the European Commission funds the activities of many NGOs in order to boost their participation in, and contributions to, regional governance (Cox 2007).

Thus, while it is useful to understand non-governmental activity as part of a broader ‘third sector’ (as distinct from government and the market), it is necessary to operationalise civil society as NGOs. Further, an appropriate conceptualisation of the NGO term can overcome some of the issues identified above, such as the restrictive focus on groups pursuing ‘good’ causes and the tendency to view non-state advocacy in opposition to the state system. Such a conceptualisation is essential for understanding the role of NGOs in the international trade regime.

NGOs

The existence of NGOs, and their networks, has been an enduring component of international politics for well over a century (Boli and Thomas 1997, 1999). The term ‘NGO’ is commonly used to refer to voluntary, non-profit organisations that engage in governance activities as insider policy-making participants and/or outsider challengers. Given that NGOs are often active participants in policy-making, Hirst and Thompson argue that the specification of these groups as *non-governmental* actors is, in practice, something of a misnomer (1999, 276-277). Though categorically separate from governments, many NGOs are playing increasingly important roles in domestic and international governance. However, these governance activities are often not immediately apparent in the general definitions of NGOs provided in the literature. For example, Khagram *et al.* view NGOs as “private, voluntary, nonprofit, groups whose primary aim is to influence publicly some form of social change” (2002, 6). Weiss and Gordenker offer a similarly vague catch-all definition, stating that NGOs consist of “durable, bounded, voluntary relationships among individuals to produce a particular product, using specific techniques” (1996, 18).

While Peter Willetts is correct when he states that “there is no such thing as a typical NGO” (1996, 62), categorisations of the different *types* of NGOs do shed greater light on the governance activities in which NGOs engage. Weiss and Gordenker distinguish between Government-Organised NGOs (GONGOs), such as those set up by governments in the former Soviet Bloc, Quasi NGOs (QUANGOs) like the International Committee of the Red Cross (ICRC) and Donor-Organised NGOs (DONGOs) for example, those established by governments or the UN to carry out specific objectives (1996, 20-21). Additional categories include Business NGOs (BINGOs), religious NGOs (RINGOs), and environmental NGOs (ENGOS). Taking into account these variations, Salmen and Eaves outline five categories of NGOs along a public/private continuum from those pursuing social goals to those seeking commercial ends (1989, 17-25).

Other scholars have categorised NGOs according to their geographical location, distinguishing between local (grassroots) NGOs, national NGOs and international NGOs (Khagram *et al.* 2002; Boli and Thomas 1997, 1999). International NGOs such as Amnesty International are generally considered to have greater power, financial resources and autonomy than nationally-based NGOs, though many international NGOs have links to nationally-based affiliate organisations. The NGO Greenpeace, for instance, comprises Greenpeace International (Stichting Greenpeace Council) in Amsterdam, 41 Greenpeace national/regional offices around the world, and 2.8 million supporters worldwide that finance the organisation (Greenpeace International).

Though there are interesting relationships between national and international NGOs and important motivations underlying the establishment of certain types of NGOs (such as DONGOs, GONGOs, and BINGOs), in emphasising their governance activities I simply conceptualise NGOs as *contributors* to international policy processes. Taking into account the definitions of NGOs above, which all highlight their status as private, non-profit organisations, I focus on NGOs that engage in political advocacy, provide technical and legal expertise to state and other non-state actors, and/or undertake other types of public awareness activities in order to achieve some kind of policy making influence. Whether such NGOs are national or international organisations, and the content of their particular normative and instrumental goals is less relevant. Having briefly considered the common understandings of NGOs in the international studies literature, below, I define the *type* of NGOs on which this thesis focuses.

Conceptualising NGOs at the WTO: reformist, non-profit advocacy NGOs

Specific to the WTO context, a number of definitions and typologies of NGOs have been proposed. Bellmann and Gerster offer three categories according to *organisational type*: (1) non-profit organisations that engage in advocacy and lobbying, (2) umbrella professional associations such as trade unions and business associations, and (3) research institutions and universities (1996, 35). Though useful for descriptive purposes, in practice these categories are difficult to sustain.

For instance, trade unions and business associations, which belong to the second category, may also be non-profit groups that frequently engage in advocacy and lobbying at the WTO, thus additionally fulfilling the characteristics of the first category. Instead, O'Brien *et al.* (2000) distinguish between NGOs in terms of their *issue focus*. They examine the activities of environmental, gender equity and labour organisations in relation to the WTO (as well as the IMF and World Bank). However, this categorisation ignores the growing phenomenon of NGOs of different issue focus that join together in common campaigns directed at the WTO. It is instructive to note that the ongoing campaign for fair trade has involved a large range of NGOs from those concerned with labour standards and human rights groups to religious and economic development issues.

Alternatively, Scholte *et al.* categorise NGOs according to their broad *objectives* in relation to the WTO, describing civil society organisations as 'conformers', 'reformers' or 'radicals' (1999, 112). As it avoids the distinction between the normative and instrumental goals of NGOs, this typology bypasses the focus in much of the literature on NGOs pursuing worthy causes and the associated tendency to ignore business associations. Conformers are described as those who accept the established trade discourse and generally endorse the goals of the WTO. They include corporate business associations like the ICC, who seek to ensure that their interests are served at the WTO (1999, 112-113). At the other end of the spectrum, radical NGOs such as Earth First! reject economic globalisation, the WTO and the existing international trade regime and call for the organisation to be dismantled (1999, 115-116). These groups do so mainly as 'outsider challengers' through protest and public mobilisation activities. However, as Mason (2004) notes, high-profile NGOs such as Greenpeace, Friends of the Earth International (FOEI), and TWN have all applied for and received recognition status to attend WTO ministerial meetings in spite of their longer term, 'radical' stances toward the WTO. For practical purposes, these groups are therefore better understood as 'reformers'.

Scholte *et al.* contend that 'reformer' NGOs work within existing institutional structures, seeking to inject issues and priorities that they consider to have been neglected in the trade liberalisation process. Reformist NGOs such as Institute for Agriculture and Trade Policy (IAPT), Oxfam International, WWF and the ICTSD engage in policy advocacy and lobbying in addition to their public mobilisation activities in order to achieve their goals. This category of 'reformer' NGOs, comprising groups that accept, and are willing to work within, the existing international trade regime, aligns with the direction and goals of this thesis, as outlined in the key research questions posed at the beginning of this chapter.

In this study then, I focus primarily upon professional, reformist, non-profit advocacy NGOs with a formal legal status and paid staff rather than conformist organisations that represent business interests or radical organisations that fundamentally oppose the WTO. There are a great many national, regional and international level NGOs comprising religious, development, environment,

and economic justice organisations, as well as trade unions, research institutes, and agricultural unions that fit within this category. In Table 3.1 below, I list the major reformist NGOs on which this study focuses.

Table 3.1 Major NGOs in international trade politics

American Federation of Labor and Congress of Industrial Organizations (AFL-CIO)
ActionAid
Catholic Agency for Overseas Development (CAFOD)
Center for International Economic Law (CIEL)
Friends of the Earth International (FOEI)
Heinrich Böll Foundation
Institute for Agriculture and Trade Policy (IATP)
International Centre for Trade and Sustainable Development (ICTSD)
International Gender and Trade Network (IGTN)
International Institute for Sustainable Development (IISD)
Médecins Sans Frontières (MSF)
Oxfam International
Public Citizen's Global Trade Watch
Public Services International (PSI)
Quakers United Nations Office (QUNO)
South Centre
Third World Network (TWN)
Trade Unions Congress (TUC)
World Wide Fund for Nature (WWF)
World Development Movement (WDM)

Of the NGOs listed in Table 3.1, Oxfam International is among the most high-profile. The organisation consists of twelve independent organisations based in developed nations around the world. It is well known for its work on a number of development, environment and trade issues and the high quality of its research over the past decade has granted it a great deal of respect as a non-governmental participant in international politics. In 2002, the Oxfam Geneva Advocacy Office was established specifically to increase the NGO's influence on the WTO (Interview, Oxfam Geneva Advocacy Office Representative 2006). Oxfam has played a key role in several international campaigns directed at the WTO and has spearheaded its own campaigns in relation to fair trade and the WTO's rules on trade in agriculture, frequently supporting the rights of developing countries in WTO negotiations.

TWN, another prominent NGO in international trade politics, is an international network of organisations dedicated to research and advocacy on development and North-South issues with the aim of injecting Southern perspectives into international policy debates (TWN). The TWN international secretariat is based in Penang, Malaysia, with additional offices located in Geneva, New Delhi (India), Montevideo (Uruguay), and Accra (Ghana). TWN also has affiliated organisations in several developing nations including India, the Philippines, Thailand, Brazil, Bangladesh, Malaysia, Peru, Ethiopia, Uruguay, Mexico, Ghana, South Africa and Senegal. Though it cooperates with a range of international and Northern based NGOs, TWN's longer term goals in relation to the WTO are more radical than reformist, though for the purposes of this study, it is considered a reformist NGO as it works within the WTO's existing structures and frequently cooperates with other reformist NGOs.

Another international NGO which straddles the reformist and radical categories is FOEI, which describes itself as "the world's largest grassroots environmental network" (FOEIa). It consists of 69 national member organisations and 5,000 local groups with more than 2 million members globally (FOEIa). Contrary to its name, FOEI campaigns on social as well as environmental issues. In relation to its trade campaigns, FOEI states: "[w]e work with others to curb the power and scope of the World Trade Organization and other regional and bilateral trade liberalization agreements" (FOEIb).

As an international federation of national trade unions, the International Confederation of Free Trade Unions (ICFTU) is a different kind of NGO. (Though the ICFTU merged with the World Confederation of Labour (WCL) to become the International Trade Union Confederation (ITUC) on 6 November 2006, for the purposes of this study, which deals with the organisation's activities in the 1990s, I refer to the ICFTU rather than ITUC). The ICFTU is among the oldest and largest global non-governmental networks and is regarded as one of the most professional, legitimate and pragmatic NGOs dealing with the WTO (Anner 2001, 54). Established in 1949, the ICFTU has 155 million individual members and 241 affiliated organisations in 156 countries (ICFTUa). The ICFTU was part of the Global Union Group, which also includes the International Trade Secretariats (ITSS) and the Trade Union Advisory Committee (TUAC) to the OECD.² The ICFTU is highly respected for the quality of its research and has considerable informal access to the WTO Secretariat (Interview, ICFTU Representative 2006).

Established in 1996, the Geneva-based ICTSD plays an important role in monitoring and reporting on developments on the trade negotiations at the WTO, with a particular focus on environmental and developmental concerns. As the ICTSD website declares,

² After 2001, the ITSS became known as the Global Union Federations.

ICTSD plays a unique systemic role as a provider of original, non-partisan reporting and facilitation services at the intersection of international trade and sustainable development. ICTSD facilitates interaction between policy-makers and those outside the system to help trade policy become more supportive of sustainable development (ICSTD 2007).

The work of the ICTSD has thus been important source of information for stakeholders and WTO policy-makers, especially those from developing nations.

Though not normally active on international trade issues, Médecins Sans Frontières (MSF) developed an interest in the work of the WTO due to the impact of the organisation's IP agreement on access to medicines in developing and under-developed nations. Primarily involved in health service delivery in the developing world, this organisation is a highly respected international medical humanitarian organisation; in 1999, it won the Nobel Peace Prize for its work in this regard. MSF is discussed in this thesis in regard to the access to medicines campaign detailed in Chapter 5.

Among the other NGOs active on international trade issues, the Quaker United Nations Office (QUNO), with offices in Geneva and New York, is involved in several WTO campaigns and runs programs aimed at assisting developing countries in trade negotiations such as the Trade, Intellectual Property and Development program. Likewise, the Centre for International Environmental Law (CIEL), with offices in Washington D.C., Geneva, and San Francisco, runs a Trade and Sustainable Development program targeting a number of international institutions including the WTO (CIEL 2008). Seeking to integrate the principles of sustainable development into international trade and investment rules, CIEL was a key NGO in the investment campaign. And ActionAid International, an international development agency, which moved its head office from London to Johannesburg in early 2004, has had a strong presence on numerous NGO campaigns directed at the WTO ranging from agriculture to IP.

In addition to the international NGOs, a number of nationally and regionally based groups are heavily involved in international trade politics. These include CAFOD, the World Development Movement (WDM) and Trade Unions Congress (TUC), all based in the UK. In the US, the Heinrich Böll Foundation, the American Federation of Labor and Congress of Industrial Organizations (AFL-CIO) (an ICFTU affiliate), and Public Citizen's Global Trade Watch, are among the most prominent North American NGOs that have campaigned on international trade issues.

Together, the NGOs detailed above, along with those listed on Table 3.1 are the most prominent NGOs active in international trade politics. Regardless of their religious, humanitarian, ideological, and development objectives, the common trait of all these NGOs is that they are professional non-profit organisations that have sought to influence the international trade regime

by engaging in various advocacy activities directed at reforming aspects of the WTO's rules. Important among these activities is the production of research papers and policy documents regarding various international trade issues. The quality of this material has granted many of these organisations a high level of respect and legitimacy among the trade policy community as well as favourable relations with media. Below, I justify the focus of this study on 'NGO campaigns', exploring how NGOs have been understood (in the literature) to work together collectively, before explaining that the most useful conceptualisation of NGO collective action is that of the NGO campaign.

Understanding NGO collective action: NGO campaigns

A range of concepts have been developed to explain how NGOs work together across borders. As discussed in Chapter 2, attempts have been made to internationalise the social movement concept viewing NGOs as 'transnational social movement organisations' that work within transnational or global social movements (Smith *et al.* 1997; Smith and Johnston 2002; Bandy and Smith 2005; della Porta and Tarrow 2005). However, the social movement term, used to capture a wide variety of protest and advocacy activity (particularly in regard to anti-globalisation protests), is simply too broad for the purposes of this study, which centres on professional NGOs with a reformist agenda in relation to the WTO.

International relations scholars have developed concepts of NGO collective action more specific to professional, reformist NGOs. The transnational advocacy network concept proposed by Keck and Sikkink (1998) denotes an NGO network comprising local/national NGOs and international NGOs, along with other supportive, issue-relevant actors. According to Keck and Sikkink, all actors within a transnational advocacy network share a common discourse and "a belief that individuals can make a difference" (1998, 17). They are also constituted by their dense exchange and creative use of information as well as sophisticated political strategies (Keck and Sikkink 1998, 2). In 2002, Khagram *et al.* distinguished two more organisational forms of NGO groupings based on their key advocacy methods. These are transnational coalitions, whereby the NGOs involved coordinate their tactics, and the broader category of transnational movements, said to engage in "joint mobilisation" (Khagram *et al.* 2002, 9).

Though Khagram *et al.*'s framework usefully combines the terminology of social movement theorists with that employed in the international relations literature, it pre-determines the types of activities in which NGOs engage. Indeed, NGOs active on trade issues are likely to not only share information, but also coordinate their tactics and engage in joint mobilisation, thus straddling all three types of groupings identified. Essentially, these concepts are predicated upon the nature of the interrelationships between non-governmental actors. In contrast, the goal of this study is not simply to illuminate the relationships between various NGOs (the extent to which they share a

“common discourse”), but to uncover more about the particular tactics that NGOs employ in order to influence the international trade regime.

To avoid the difficulties of the above conceptualisations of NGO collective action, I instead employ the more basic notion of an *NGO campaign*. Here, Jordan and van Tuijl explain that a transnational NGO campaign involves “the pursuit of loosely linked political objectives” that are “named after the dominant concern or after the targeted object” (2000, 2053). Investigating NGO campaigns better captures the fluid nature of the NGO sector in the WTO context where a variety of NGOs, regardless of their primary issue orientation, come together in common campaigns to target the WTO, utilising a range of tactics. The multifaceted nature of international trade policy does not lend itself to a specific issue focus as international trade rules impact upon a broad range of policy areas. Indeed, NGO campaigns directed at the WTO attract environmental, development, human rights, anti-globalisation, labour, religious and aid organisations. For NGO campaigns directed at the WTO, statements of “political objectives” are found in campaign documentation such as joint-NGO declarations and sign-on statements. Indeed, it is the *pursuit* of these political objectives that this study seeks to shed light upon in order to evaluate the role that NGOs play in the international trade regime. Understanding international NGO collective action in terms of NGO campaigns is thus a more specific, targeted conceptualisation of NGO collective action in regard to the WTO than the options presented above by social movement and constructivist scholars.

Assessing the role of NGO at the WTO

Because they do not possess hard power or formal authority, the study of NGOs is more methodologically complex than the study of nation-states or international institutions. The activities of NGOs are typically conducted behind-the-scenes, giving rise to several difficulties in assessing their role at the WTO. I now explain that the role and influence of reformist NGO campaigns within the international trade regime is best understood in terms of agenda-setting and determinations over relevant issues rather than their impacts upon WTO decision-making (see Bachrach and Baratz 1962).

One obvious approach to conceptualising the NGO role within the international trade regime is to adopt a ‘hard’ test case and simply view NGO influence in terms of whether or not it impacts WTO decision-making (see Dahl 1961 and Polsby 1963 for an early articulation of the pluralist or “one dimensional” approach to power at the national level). For example, in studies of NGOs in international environmental governance, Michael Lisowski (2005) looks at how NGOs “tip the balance” toward particular decision-making outcomes. Similarly, David Humphreys (2004) understands NGO influence in regard to how they affect the decision-making (in regard to textual outputs) arising from international forest negotiations. In the area of human rights, Joachim (2003, 2007) emphasises the significance of NGO access to UN organisations, which she states is an

important avenue for influencing decision-making outcomes. However, international environmental governance and international discussions around human rights issues differ from international economic governance in that NGOs have far less formal access to multilateral economic institutions like the WTO. In the area of multilateral economic governance, the work of Fox and Brown (1998) and O'Brien *et al.* (2000) attests that adopting such an approach would not have allowed these scholars to uncover the more subtle ways in which NGOs have affected the World Bank, WTO, and IMF in terms of agenda-setting and the reshaping of institutional structures.

As David Dery (2000) explains (albeit in relation to a national level social movement organisation), while non-governmental groups can exert sufficient influence to get an issue on the policy agenda, they often have little or no influence over how decision-makers subsequently respond to the issue or problem raised. Nevertheless, their role in getting an issue on the agenda for consideration in the first place, whether it is addressed in a manner they support or otherwise, is significant as it reveals that NGOs play important roles at earlier stages of policy making processes. Understanding and assessing NGO influence in terms of the actual decision taken then, which occurs towards the *end* of the policy cycle, is misdirected as it fails to adequately capture the role that such actors do play (see Bachrach and Baratz 1962 for their articulation of the “second dimension” of power and their critique of the pluralist approach in the American political context). As such, there is a need to differentiate between the agenda-setting, decision-making and implementation phases in the international policy cycle in order to better capture the role of NGOs in international governance. As such, viewing NGO influence as the power to affect decision-making is better suited to activity in international governmental arenas where NGOs have greater formal access than at the multilateral economic institutions. At the WTO then, it is more likely that NGOs will play a role in the agenda-setting stage, while those with formal authority – nation-states – will debate the direction and specific content of issues that NGOs helped bring to the decision-making table.

This study therefore conceptualises the role and influence of NGO activity in relation to the WTO as agenda-setting. This approach recognises the significant role of NGOs at the very beginning of the policy process as evident in the origins of the agenda-setting concept in media studies and in the discipline of public policy (see McCombs and Shaw 1972; Cobb and Elder 1983; Kingdon 1984; and Baumgartner and Jones 1993; Kerbel 1995; Cappella and Jamieson 1997; McCombs, Shaw, and Weaver 1997).³ Cobb and Elder profess that agenda-setting (‘agenda-building’ in their terms) concerns “how issues are created and why some controversies or insipient issues come to

³ The term itself was coined in 1972 by Maxwell E. McCombs and Donald L. Shaw. Their study examined the influence of the media on issues of concern to voters in the US state of North Carolina in the lead-up to the 1968 US election. They found a very strong correlation between the issues that most concerned voters and the stories covered most often by the media.

command the attention and concern of the formal centers of decision-making, while others fail” (1983, 14). Agenda-setting therefore refers to the role of any type of political or societal actor in promoting a particular issue that they wish to have addressed, in a particular way, by decision-makers at any level of governance. It is apparent that professional, reformist NGOs that operate internationally are especially adept at exerting influence in this way due to their organisational flexibility, effective utilisation of the media, lobbying skills, perceived legitimacy and supposed independence (from business actors and states). Conceptualising the NGO role in terms of agenda-setting offers a way to avoid overly simplistic tests of whether NGOs ‘matter’ in international trade politics, as it views NGOs as contributors to global level policy-making, particularly at the beginning of the policy cycle.

NGO agenda-setting: mobilising support

So far, I have explained that this thesis will focus on professional, reformist advocacy NGOs that possess a high level of resources, knowledge, and expertise, and who periodically and temporarily join together in campaigns to target aspects of the international trade regime. But how should the particular *strategies* that NGOs pursue to affect WTO negotiations be categorised? The general literature on NGOs in international politics (as outlined in Chapter 2) pinpoints a range of campaign tactics that NGOs use in their attempts to exert influence on decision-makers. These include disseminating relevant information to specific political actors and the general public, engaging in public demonstration activities, hosting campaign workshops and issue-relevant conferences, organising boycotts, lobbying at international organisations, and forging alliances with nation-states and issue-relevant non-state actors. Much of this activity can be described generally as *mobilising support*; in essence, it involves NGOs working to gain agreement among a sufficient number of actors so that decision-makers are forced to respond to NGO demands.

However, there is some implication, particularly in constructivist contributions to the existing NGO literature, that decision-makers (and other targeted actors) simply capitulate to the normative demands of NGOs if a critical mass of normative support is achieved (Klotz 1995; Wapner 1995; Keck and Sikkink 1998; Price 1998). This scenario is unlikely to ensue for campaigns directed at the WTO: nation-states are the only actors permitted to participate in decision-making and their goals revolve around realising the economic gains to trade while minimising domestic political fallout. As such, I suggest that in mobilising support for policy changes at the WTO, NGO campaign goals must resonate with the objectives of WTO member states. In other words, NGO campaign goals must be compatible in some way with the interests of at least a small section of WTO members in order to provide sufficient impetus for these states to actively support the introduction of an issue to the WTO discussion agenda. This involves NGOs demonstrating that a campaign issue is relevant to the core business of the WTO and highlighting to supportive states the aspects of an issue that, if resolved, could benefit these states. I therefore challenge the idea

that NGOs and states are mostly 'opposing forces' in international politics and instead will attempt to show that in many circumstances, their goals and activities are complementary.

A key aspect determining the capacity of NGOs to mobilise consensus among both the NGO sector and amenable WTO member states are the constraints and opportunities facing NGOs in attempting to achieve their goals. Featuring in the social movement literature, the idea that political actors are embedded within *political opportunity structures* is extremely useful for beginning to understand the role of NGOs at the WTO (see Tilly 1984; Tarrow, 1996; McAdam *et al.* 1996). The political opportunity structure essentially refers to the institutional context in which actors operate. Taking account of the political opportunity structure offers a corrective to the constructivist focus on NGO agency by directing attention to the particular conditions that constrain and enable NGO campaigners.

For NGOs that conduct campaigns at the international level, a complex set of political opportunity structures affect their activities. NGOs must navigate the relations between nation-states (in terms of conflict, cooperation and power disparities), as well as the issue priorities and governance structures of international institutions. For NGOs waging campaigns against the WTO, the role and operations of institutions such as the ILO and the United Nations Conference on Trade and Development (UNCTAD) are important as NGOs have greater formal access to these institutions than they do to the WTO. The activities of other non-state actors also present opportunities and risks for NGO campaigners. In regard to reformist NGOs that campaign on international trade issues, the most likely non-state challengers are MNCs (and other 'conformist' groups) as well as more 'radical' NGOs that hold opposing goals. However, depending upon the campaign issue at stake, it may be just as likely that these other non-state actors have complementary objectives, and therefore, their presence may be more of an opportunity than a threat.

On top of international level factors, domestic political structures also affect NGO attempts to mobilise normative consensus for their goals (see Putnam 1988; Risse-Kappen 1995). These revolve around the problems and opportunities arising from the national implementation of international trade rules (such as adverse effects for citizens of developing countries), and domestic electoral cycles, especially in powerful states such as the US. These types of domestic political factors shape the preferences of WTO member states, and thus their amenability to NGO goals. Altogether, a complex mix of international and domestic political factors profoundly shape the behaviour of NGOs (as well as states), structuring the way in which NGOs campaign for the WTO to address their particular issues. These political opportunity structures then must be of prime consideration in understanding the strategies and tactics utilised by NGO campaigners to mobilise support and thus the role that they play in the international trade regime. The selection of the specific NGO campaigns investigated in this thesis are outlined and justified below.

Case studies

Of the broad range of NGO campaigns directed at the WTO, I select three campaigns in the areas of labour standards, foreign investment rules, and IP rights through which to examine the strategies and tactics of NGO campaigners and the role that they play in international trade politics. These are:

- 1) the campaign for the incorporation of core labour standards into WTO rules;
- 2) the access to medicines campaign opposing the application of the WTO's TRIPS Agreement to generic essential medicines required in developing nations; and
- 3) the campaign against the development of a WTO foreign investment agreement.

Following a brief description of the key aspects of each case below, I justify their selection showing how these cases have the best potential to provide answers to the focus questions guiding this study.

The first case study, the campaign for the incorporation of a core labour standards clause into the WTO framework, was led by the ICFTU and supported by a range of labour unions and NGOs from around the world. The campaigners lobbied the WTO to incorporate a 'social clause' into trade rules that would commit WTO member states to respect seven basic ILO conventions relating to freedom of association, the right to collective bargaining, the abolition of forced labour, prevention of discrimination in employment and a minimum age for employment. In doing so, they attempted to draw attention to the link between increased trade liberalisation and labour exploitation, arguing that the violation of labour rights in export sectors is an unfair trade practice. Though this campaign continues today, the case study focuses upon the campaign in the lead-up to the 1996 WTO ministerial conference in Singapore through to the 1999 Seattle conference. Though a labour standards clause was supported by a number of influential states, including the US, it was strongly opposed by most developing nations and ultimately, attempts to institutionalise the link between trade rules and labour standards at the WTO failed.

The second case, the access to medicines campaign directed against the WTO's TRIPS Agreement, involved NGOs seeking to prevent WTO rules from curbing developing country access to affordable generic versions of patented medicines for diseases predominantly suffered by those in the developing world. The major point of debate concerned whether (and indeed exactly *how*) the in-built TRIPS 'safeguards' might be utilised by developing countries. The campaign tactics of the key NGOs, including MSF, Oxfam International and ActionAid, were aimed at exposing the support of wealthy WTO member states for maintaining high international IP standards with narrow recourse for utilising the safeguards. These NGOs also worked closely with developing WTO member states including India, Brazil and the African Group, whose citizens were most affected by WTO rules in this area. Ultimately, the NGO campaigners were successful in having

this issue debated at the WTO, with member states agreeing upon the 2001 Doha Declaration on TRIPS and Public Health, which permitted developing countries to utilise the safeguard measures to meet public health objectives.

The final case study is the NGO campaign against the establishment of a WTO investment agreement. Although the NGO campaigners and most developing WTO members opposed all four Singapore Issues, investment is chosen as the focus of the case study because it was the most contentious and divisive issue and attracted a greater level of attention from NGOs than the other issues.⁴ Following the 2001 Doha Ministerial Conference, a vast array of NGOs and several developing countries were extremely unhappy with the 'consensus' decision that members would begin negotiations on a WTO investment agreement. With the aim of having the investment issue removed from the WTO's agenda at the organisation's the 2003 Cancún Ministerial Conference, a NGO campaign emerged to publicise the negative aspects of a potential WTO investment accord. According to the NGOs, these included greater economic volatility for developing and newly industrialising countries, the potential for a 'race to the bottom' in regulatory standards in areas such as labour standards and the environment, and increasing the power of MNCs *vis-à-vis* nation-states. At the Cancún Ministerial Conference, the NGOs supported the G-90 of developing nations in refusing to agree to the launch of negotiations on a WTO investment agreement. Following the collapse of the Cancún meeting, in July 2004, WTO members agreed to remove investment from the Doha Agenda altogether as part of a broader initiative to salvage the Doha Round of trade negotiations. Thus, the removal of the investment issue from the Doha Round makes this NGO campaign another useful case study for examining the roles of NGOs in relation to the international trade regime administered by the WTO.

Case study justification

The case study selection comprises three NGO campaigns that have played roles at the agenda-setting stages of the international trade policy process. In adopting a 'most similar' approach to case study selection – that is, selecting cases of NGO campaigns that have all managed to affect the WTO agenda in some way – I aim to reveal the major campaign tactics and strategies utilised by NGOs and elucidate the important roles that they play at the beginning of policy-making processes at the WTO. The three cases selected above provide the opportunity to understand more about these roles in regard to three separate issue-areas.

⁴ In addition to investment, the Singapore Issues, which came out of the WTO's 1996 Singapore Ministerial Conference, include competition policy, transparency in government procurement, and trade facilitation. WTO working groups were set up on each of these issues with a view to beginning negotiations at some future point.

However, the cases differ in a number of respects. Most importantly, they differ in terms of their goals for the WTO arena. The access to medicines campaigners attempted to modify an existing WTO agreement (TRIPS), the investment campaign worked to remove the proposed WTO investment agreement from the Doha Round agenda, while the labour campaigners sought to incorporate an entirely new accord into WTO rules. Put differently, both the medicines and investment campaigns aimed to *scale-back* the WTO's authority over nation-states, declaring that the application of 'one-size-fits-all' international rules applied to all WTO members regardless of development status are inappropriate. These NGOs supported the autonomy of developing countries to make decisions about their economic development and social priorities independently of WTO rules. In contrast, the labour standards campaigners sought to *expand* the institution's authority over member-states by seeking to integrate labour standards into WTO rules to be uniformly applicable to all states. The selection of these cases will allow for an analysis of how these different goals affect the strategies and tactics utilised and whether it is easier for NGOs to lobby for the WTO's jurisdiction to be curbed rather than expanded.

Another key difference between the selected case studies concerns the relations between the NGO campaigners and particular WTO member states in relation to each campaign issue. In regard to the medicines and investment campaigns, the NGOs allied with developing WTO member states. In contrast, the ICFTU, the chief campaigner on labour standards, worked closely with the US, Norway and other EU states (among the most influential WTO members) in attempting to incorporate labour standards into WTO rules. The power disparities between the states with which the NGO campaigners forged relationships in respect of the campaign issues allows for an examination of NGO relations with both developed and less developed states. This will enable a comparison of the different roles played by NGOs when they share goals with different types of WTO member states.

In sum, the selected case studies of NGO campaigns have been chosen on the basis of their similarities and differences with the overall goal of understanding more about the roles played by NGOs in the international trade regime. In sum, the key differences (or variables) revolve around the type of change advocated (in terms of a new WTO accord, the removal of issues from the WTO agenda, or the modification of an existing WTO accord) and the WTO member states with whom NGO campaigners share objectives. Below, I outline the structure that each case study chapter will follow.

Case study structure

In each case study chapter of this thesis, a number of key aspects of each NGO campaign will be explored in order to allow for an understanding of the idiosyncratic characteristics of each case, as well as those central to the comparison. As background to the campaign issues, the history of international cooperation in the areas of labour standards, IP and investment rules will be

presented in each case study chapter respectively. This will be followed by an explanation of the key area or point of contention surrounding each of the issues, including how labour standards, IP and investment have been previously dealt with at the WTO and the views of various WTO member states in regard to each issue. In each case, contention among WTO member states contributed to the establishment of the NGO campaign under investigation.

The major section of each case study chapter is devoted to an examination of the NGO campaign itself, including the tactics and strategies used in targeting the WTO and the roles played by various nation-states and other actors such as MNCs and opposing NGOs. I examine how NGOs utilised available political opportunities to stimulate debate among WTO members and mobilised support among the relevant NGO communities and states. This is followed by an outline of the campaign tactics employed, including the utilisation of NGO sign-on statements; the organisation of public events and issue-relevant workshops; the publication of research papers and reports on WTO events and developments; NGO lobbying at alternative international arenas; and NGO relations with other state and non-state actors, particularly WTO members. I closely examine the events that took place at the relevant WTO ministerial conferences and how campaign issues raised by NGOs were addressed. The final part of each chapter briefly pinpoints the key mechanisms utilised by NGOs in mobilising support for their goals external to the WTO and how they attempted to transfer this support to the WTO agenda by engaging with particular WTO member states. A comparative analysis of the case study findings is provided in Chapter 7.

Data sources

The case study chapters of NGO campaigns draw upon two types of data: NGO and WTO web-based documentation and media reports (primary sources) and existing academic literature that provides information and analysis of the NGO campaigns and WTO proceedings (secondary sources). The major types of NGO material utilised are campaign documentation including mission statements, campaign statements and declarations, NGO research reports, and accounts of workshops and other NGO-sponsored meetings. From the WTO website, the major resources used were those pertaining to the ministerial conferences including ministerial conference declarations, the statements of WTO members and explanations of WTO agreements and news items.

Additionally, as a tool of preliminary investigation, I additionally conducted semi-structured interviews with representatives of five NGOs, Global Trade Watch Australia and Oxfam Community Aid Abroad Australia in December 2005; and Oxfam International (Geneva Advocacy Office), MSF, and the ICFTU in September 2006. I also interviewed a representative of the WTO's External Relations Division in September 2006.⁵ These interviews comprised broad discussion of:

⁵ For further details, see the Interviews section in the Reference List.

- 1) the relations between NGOs, WTO member states, the WTO and other non-state actors;
- 2) the WTO's mechanisms for the engagement with NGOs;
- 3) the relationships between selected WTO member states and NGOs;
- 4) the strategies utilised by NGOs in regard to the medicines, investment and labour standards campaigns; and
- 5) the impact of the above campaigns.

Finally, I attended and participated in the September 2006 WTO Public Forum. The annual WTO Public Forum is a two-day event held at the WTO headquarters in Geneva open to civil society, academics, WTO members, the business community as well as the general public to discuss the challenges for the multilateral trading system. Importantly, the WTO invites NGOs to submit topic proposals for sessions at the Forum. I attended sessions closely linked to the NGOs campaign issues examined in this thesis, including 'Can Trade Deliver Decent Work in the XXIst Century?' organised by the ICFTU; 'G-20 Civil Society Views on the WTO' organised by the Friedrich-Ebert Foundation (FES) and Consumer Unity and Trust Society (CUTS) International; and 'Stocktaking of WTO Negotiations: Concerns of Developing Countries' organised by the South Asian Association for Regional Cooperation Chamber of Commerce (SCCI). Attendance and participation in these sessions was valuable in terms of hearing alternative views and discussing issues relevant to the selected NGO campaigns with stakeholders.

Conclusion

Based upon the insights of Chapter 2, which found that existing WTO-NGO scholarship focuses on the democratising potential of NGOs at the WTO rather than their real-world impact, the present chapter reiterated the research questions guiding this thesis regarding the current role of NGOs at the WTO: (1) what strategies or tactics do NGOs employ in contesting international trade issues and WTO decision-making; and (2) what roles do NGOs play in the international trade regime? I then went on to develop a comparative case study methodological framework for addressing these questions, one of the most comprehensive methods in social and political sciences.

Stressing the importance of *systematic comparisons*, the comparative case study method, as developed by Eckstein (1975), George (1979, 1994), Yin (2003) and others, aims to generate improved "statements of regularity about the structure, behaviour, and interaction of phenomena" (Eckstein 1975, 88), in this case, about the role of NGOs in international trade politics. Adhering to the major guidelines of this method, I explained that this study will focus on reformist, non-profit, advocacy NGOs (as opposed to 'radical' or 'conformist' NGOs) and justified the

conceptualisation of NGO collective action in terms of NGO campaigns. Derived from the existing literature and preliminary evidence about NGO behaviour in regard to the WTO, I conceptualised NGO campaign activity in terms of 'mobilising support'. This involves not only a focus on how NGOs work to generate consensus among the NGO community, but also how their campaign goals resonate with the objectives of particular member states. This understanding seeks to address the relative neglect of the role of relations between nation-states and NGOs in studies of NGO advocacy in international politics. I also examined the various ways in which NGO influence has been conceptualised, and contended that for the purposes of this study, it is best understood in terms of agenda-setting, which occurs at the beginning of the policy-making cycle.

The final part of the chapter introduced the case studies of NGO campaigns that have targeted the WTO in the areas of labour standards, IP rules and foreign investment. The selection of these particular NGO campaigns that have all achieved some level of influence (in terms of getting their issues addressed at the WTO), is aimed at revealing the range of different tactics and strategies that NGO campaigners utilise to contest international trade policy-making and illuminate the roles that they play within the international trade regime.

Two major differences among the cases studies of NGO campaigns were identified that will help generate new theory about how NGOs attempt to influence decision-making at the WTO and the role that they play within the international trade regime. First, by selecting cases that attempt to both minimise and expand WTO authority, the study will be able to examine how NGO campaign goals affect the types of strategies pursued. I posited that it is likely to be more difficult for NGOs who campaign for the establishment of new WTO accords to achieve their goals than it is to lobby for the removal of issues from the WTO's negotiating agenda. Second, the cases detail NGO campaigns where NGO goals have aligned with both developing countries (the medicines and investment cases) and those of more powerful states (the labour standards case). Therefore, the case selection also provides scope to examine how NGOs strategies might differ in line with the various states involved, as well as the mechanics of the relationships between NGOs and member states with differing power capabilities.

In the three case study chapters that follow, I explore in detail how NGOs contest international trade issues by harnessing political opportunities and attempting to mobilise support for their goals among the international NGO community and various amenable WTO member-states. Drawing upon secondary and primary source material, including interviews with NGO personnel and a representative of the WTO, the case studies illustrate the strategies and tactics employed by NGOs to affect the WTO's agenda. Following the three case study chapters, the final chapter is dedicated to comparing and contrasting the insights gained from the case study research in order to build theory about the roles of NGOs in the international trade regime and explain why power-based outcomes do not consistently prevail at the WTO.

Chapter 4

THE CAMPAIGN FOR INTERNATIONAL CORE LABOUR STANDARDS AT THE WTO

Introduction

The long-running campaign to incorporate internationally recognised core labour standards, also known as a 'social clause', into WTO trade rules has given rise to entrenched divisions amongst developed and developing member states, NGOs and scholars. The ICFTU, through its 'Campaign on Labour Standards and Trade', has been a major non-governmental advocate for WTO labour rules. In its campaign push for WTO labour standards, the ICFTU was strongly supported by sympathetic, influential states (including the US, Norway and France), which used their influence to have to the issue of labour standards discussed by members at the WTO's 1996, 1998 and 1999 ministerial conferences.

Although the issue of core labour standards was repeatedly debated at the WTO, a number of factors contributed to the failure of NGOs and pro-labour member states – and conversely the success of the opposing developing countries – to enact a WTO social clause. These factors were the complex regulatory 'Baptist and bootlegger' nature of different coalitions involving moral values and economic interests with vastly different payoffs for different states (see Yandle 1983), and the WTO's decision-making process based on obtaining consensus among member states. Domestic politics in the US also played its part, since the 1999 Seattle ministerial was held in the lead-up to the 2000 Presidential elections. Whilst the bid to develop a WTO social clause was ultimately unsuccessful, it did contribute to progressive developments on labour standards at the ILO. These included the 1998 Declaration on Fundamental Rights at Work and its Follow-up and the inclusion of labour standards provisions in regional and bilateral free trade agreements involving the US, the EU and other pro-labour states.

This chapter assesses the role played by the ICFTU in lobbying for a WTO labour clause, the nature of relations between the ICFTU and sympathetic nation-states in this context, and how the issue was dealt with at the WTO. The linkage of international trade and labour standards is a complex international policy issue and together, these state and non-state labour standards advocates employed a number of arguments to support their case. These included arguments that labour standards are universal human rights, constitute 'fair' international trade rules, and can assist the economic development of the global South. Labour standards proponents also argued that the WTO, with its effective dispute system, was the most appropriate multilateral arena in which to enforce labour standards.

Conversely, most developing nations, along with some NGOs from developing nations, opposed the trade-labour linkage on the basis that it would constitute protection for wealthy WTO members and thus compromise the gains to trade for developing countries. Indeed, most of the existing literature on core labour standards at the WTO focuses on these ‘for’ and ‘against’ arguments and analyses various options for enhancing cooperation between the WTO and ILO in regard to this issue (see Hughes and Wilkinson 1998; Hensman 2001; Thomas 2002; Leebron 2002; van Roozendaal 2002; Basu, Horn, Román and Shapiro 2003; Elliot and Freeman 2003; Guzman 2003; Mavroidis 2003; Staiger 2003; Winters 2003; Trebilcock 2003; Cho 2005).

Instead, this chapter seeks to contribute to the goals of the thesis by explaining how the multiple arguments contained in the labour standards debate facilitated a pro-labour linkage ‘alliance’ between the NGOs and states supporting a WTO social clause. In contrast to the other two case studies utilised by this thesis, which concentrate on relations between NGOs and developing states, the labour standards campaign allows for an investigation of the relationship dynamics between NGOs and more powerful WTO members. It provides a basis upon which to compare and contrast the nature of these relationships, facilitating an understanding of some of the key differences in the roles undertaken by NGOs in the international trade regime according to the development status of the members for whom their positions support. In Chapter 7, I synthesise this by noting – with specific reference to this campaign – that NGOs play key roles in enhancing the legitimacy of the negotiating positions of WTO member states by promoting normative rationales for policy change. However, unlike the investment and medicines campaigners (see Chapters 5 and 6) the labour standards campaigners played less of a role in harnessing relevant political opportunities and mobilising support internationally – instead they relied on their close links to influential pro-labour member states.

The first part of the chapter provides a brief history of international cooperation on labour issues at the ILO and GATT, which illustrates some of the power dynamics at play among member states. This is followed by an overview of conceptualisations of the linkage issue in the literature dedicated to the trade-labour linkage. I then turn to the WTO arena and investigate member state activity and NGO lobbying in regard to the labour issue, focusing on the 1996 Singapore, 1998 Geneva, and 1999 Seattle ministerial conferences. Finally, I explain that the WTO institutional characteristics were obstructive for the progression of labour standards issues in this arena, despite the relative power of pro-labour WTO member states. As such, these states (and NGOs) continue to progress labour standards in other more international fora including the ILO and through the UN Global Compact.

Linking trade to labour standards: international cooperation at the ILO and GATT

The history of international cooperation on the trade/labour linkage at the ILO, GATT and other international fora has been limited. This section outlines the unsuccessful attempts of pro-labour states to tie labour standards to international trade rules prior to the establishment of the WTO to illustrate the impediments to successfully negotiating international regulations, even for powerful states. Specifically, the decision-making procedures in place during the Uruguay Round of trade negotiations and the ILO's weak compliance mechanisms have prevented powerful states from achieving their objectives. Indeed, these states must often retreat to other fora in which they have greater influence, and this was largely the strategy of the US in attempting to keep the linkage issue on the international agenda prior to, and during, the debate at the WTO.

The notion that internationally-recognised labour standards might accompany international trade liberalisation did not emerge with the establishment of the WTO, but has been subject to international discussion since the end of the First World War. The beginnings of the debate can be traced back to the establishment of the ILO by the Treaty of Versailles in 1919. In recognition of the interdependent nature of labour standards, the preamble of the ILO Constitution states that "the failure of any nation to adopt humane conditions of labour is an obstacle in the way of other nations which desire to improve the conditions in their own countries" (ILO 1919). In 1946, the ILO became a UN-affiliated organisation and is considered the premier institution dealing with labour issues internationally (though this status has been threatened by the labour standards debate at the WTO). The organisation now has a membership of 181 states and is unique among international organisations in that it has a tripartite corporatist structure, where labour and business are represented alongside states.

The ILO administers a system of international labour standards, contained in almost 190 conventions, "aimed at promoting opportunities for women and men to obtain decent and productive work, in conditions of freedom, equity, security and dignity" (ILO).⁶ Of these conventions, eight have been endorsed in a number of international arenas as 'core' labour standards. These are:

- C29 Forced Labour Convention, 1930 (concerning forced or compulsory labour);
- C87 Freedom of Association and Protection of the Right to Organise Convention, 1948;
- C98 Right to Organise and Collective Bargaining Convention, 1949 (concerning the application of the Principles of the Right to Organise and to Bargain Collectively);
- C100 Equal Remuneration Convention, 1951 (concerning equal remuneration for men and women for work of equal value);

⁶ For a full description of ILO Conventions see the ILO website. URL: <http://www.ilo.org/ilolex/english/convdisp2.htm>.

- C105 Abolition of Forced Labour Convention, 1957;
- C111 Discrimination (Employment and Occupation) Convention, 1958;
- C138 Minimum Age Convention, 1973; and
- C182 Worst Forms of Child Labour, 1999.

These conventions have been included in the UN Universal Declaration of Human Rights (1948), the International Covenant on Civil and Political Rights (1966), the International Covenant on Economic, Social and Cultural Rights (1966) and the 1995 UN World Summit for Social Development. Indeed, the 1995 UN World Summit in Copenhagen helped pave the way for international consensus on seven of the conventions in the June 1998 ILO Declaration on Fundamental Principles and Rights at Work and its Follow-up (C182 was not established until 1999).

While the ILO possesses a unique tripartite organisational structure, this has not helped alleviate the organisation's limited capacity (beyond suasion) via monitoring and reporting on national compliance, to enforce its labour standards conventions. As these standards align with those in wealthy industrialised nations, it is primarily less developed countries that are targeted for violating ILO conventions. However, the ILO's limited enforcement capacity has rendered it an ineffective institution in the eyes of developed states and pro-labour civil society organisations, especially trade unions based in the global North, who view labour standards as basic human rights that should be internationally respected. Hence, numerous efforts have been made on the part of these state and non-state actors to strengthen international labour standards by seeking to integrate them into international trade rules in order to force developing countries with low standards to improve their conditions for labour.

The efforts of wealthy states and trade unions to formally link labour standards to international trade began in the early 1940s. Indeed, the failed International Trade Organisation (ITO) was set up to incorporate labour standards (Blackett 1999). Article 7 of the Havana Charter, adopted at the 1947 United Nations Conference on Trade and Employment that proposed the creation of the ITO, contained a provision on Fair Labour Standards. It stated that all countries shared a common interest in respecting fair labour standards:

The Members recognize that unfair labour conditions, particularly in production for export, create difficulties in international trade, and, accordingly, each Member shall take whatever action may be appropriate and feasible to eliminate such conditions within its territory (UNCTAD 1948).

However, the US did not ratify the ITO Charter due to opposition from the Senate and thus the ITO was not established. The parties to the agreement had, however, been engaged in parallel negotiations on substantive tariff concessions, out of which the GATT was established in 1947

(Alben 2001, 1431; Howse, Langille and Burda 2006, 176). The GATT did not contain a provision on labour standards, though it did permit members to take measures relating to the products of prison labour (Article XX(e)), measures to protect public morals (Article XX(a)) and measures relating to human life or health (Article XX(b)). For pro-labour states, including the US and European states, these provisions were deemed insufficient for improving international respect for labour standards, especially given that developing states were not 'contracting parties' to the GATT.

The complexity of the interests and moral values involved in the labour-trade linkage debate began to emerge with the US State Department's attempt to incorporate a labour clause into the GATT in 1952, which drew heavily upon the Article VII of the ITO Charter (Alben 2001, 1436). The US supported this measure not simply because it had a normative commitment to upholding labour standards, but because it wanted to ensure Britain's support for Japan's accession to the GATT. Britain considered the accession of Japan a major threat to its cotton textiles industry, and the US saw a GATT labour clause as a way to ease British concerns whilst gaining from increased trade with Japan (Alben 2001, 1433-1437; Howse *et al.* 2006). The call for a GATT labour clause was supported by the British Trade Union Council who, along with US trade unions, lobbied their governments to support a GATT labour clause to prohibit the movement of goods made in violation of labour standards. These included the right to organise, the prohibition on child labour, minimum wages, and minimum hours of work (Charnovitz 1987, 575).

Ultimately, a GATT labour clause was a rather coarse instrument for alleviating British concern about Japan's accession. Instead, the GATT contracting parties instituted a one-off 'safeguard' clause for the cotton textiles industry only. In addition, several GATT parties employed a number of discriminatory tools to restrict Japanese imports (Alben 2001, 1438). However, one effect of the GATT labour clause debate was that during the period in which Japan's accession to the GATT was being considered, Japan ratified ten ILO conventions, while only ratifying two ILO conventions in the 15 years after its GATT accession (Alben 2001, 1438-1439). Thus, via the GATT, wealthy contracting parties were able to exert their power resulting in special instruments to maintain their specific interests with the flow on effect of having Japan increase its commitments to the ILO in order to boost its application for entry into the GATT club.

From the late 1950s onwards, wealthy states and trade union groups from these states continued to push for a GATT social clause to integrate labour standards into international trade rules, though this did not result in any significant outcomes (Charnovitz 1987, 575). For example, in 1959, the ICFTU and TUAC argued for the resurrection of the ITO Charter and for GATT contracting parties to enact permanent labour standards provisions (Charnovitz 1987, 575). And, during the Tokyo Round from 1973 to 1979, the Nordic countries promoted discussion on labour standards as a potential future issue for the GATT, though some contracting parties denied there was any

connection between labour standards and international trade (Charnovitz 1996, 565; Hughes and Wilkinson 1998, 375).

During the Uruguay Round, further attempts by pro-labour states were made to get labour standards on the agenda (Hughes and Wilkinson 1998: 375). In preparatory meetings the US raised the issue of how the GATT parties might deal with workers' rights, and the European Parliament issued a resolution stating its support for a GATT social clause for the new round (Charnovitz 1987, 565; Howse *et al.* 2006, 177). Nonetheless, these efforts were rejected by most developing countries. During the final phases of the Uruguay Round in late 1993, the United States proposed the creation of a working group at the soon to be established WTO, which would examine the links between labour standards and trade, but again, this proposal failed to generate enough support from the membership (Stigliani 2000, 187). In April 1994 at the Marrakesh conference, almost every Minister expressed a view on whether there should be a role for the WTO in regard to labour standards (WTO 1996b). The European Parliament proposed to expand GATT Article XX(e) (allowing for trade restrictions on products manufactured in prison) to encompass child labour and the principle of freedom of association and collective bargaining (Waer 1996, 31). Ultimately, these calls for the integration of labour standards into WTO rules failed and only entrenched the divisions between wealthy and developing states over the issue.

Upon the conclusion of the Uruguay Round in 1994, having failed to get their way at the GATT/WTO, the US and EU developed labour standards provisions within their own trade policies and attempted to exert their power in other international, regional and bilateral fora more amenable to their influence. In 1994, the US sought to establish a working group at the ILO entitled 'Social Dimensions of the Liberalisation of International Trade' to examine labour rights and economic development in the context of international trade and investment (Stigliani 2000, 183). Even this attempt, like those within the GATT, was rejected by developing countries led by India and Pakistan (Stigliani 2000, 183). As a result, the ILO's governing body decided in 1995 that the issue of trade sanctions would not be addressed nor would the issue of the link between international trade and social standards (Trebilcock 2003, 290). However, one positive development that kept the issue of international labour standards on the international agenda was the endorsement of 'basic workers' rights' at the UN World Summit for Social Development in March 1995.

The US and EU also attempted to encourage developing states to comply with international labour standards by including labour rights conditionality in their Generalised System of Preferences (GSP) regimes.⁷ In 1995, the EU revised its GSP provisions to allow the withdrawal of benefits to developing states if they violated core labour standards (Braithwaite and Drahos 2000, 235). In

⁷ GSP laws are recognised as exceptions to WTO non-discrimination rules that permit developed countries to extend preferential and differential treatment to developing countries.

determining whether to extend GSP benefits to a nation, the US GSP law requires the US President to take into account whether a country has taken or is taking steps to uphold internationally recognised workers' rights (Office of the USTR 2000). The US has also unilaterally incorporated labour rights provisions into its region-specific trade legislation (such as the Caribbean Basin Initiative, the African Growth and Opportunities Act, and the Andean Trade Preferences Act) as well as into the North American Free Trade Agreement (NAFTA) (Howse *et al.* 2006, 177; Kolben 2006, 230).

In parallel to the attempts to strengthen labour standards compliance in bilateral and regional fora, the linkage debate at the GATT/WTO continued to have a significant impact on the ILO during the 1990s, despite the failure of the US to establish an ILO working group on the matter. This was partly in response to concern that the ILO was being sidelined on the issue of core labour standards (Hughes and Haworth 1997, O'Brien *et al.* 2000; Haworth and Hughes 2004) but also because it served pro-labour standards states, particularly the US, to keep the issue on the international agenda. In 1997, the ILO membership debated but rejected the ILO Director-General's proposal for the ILO to administer a certification and labelling program of products from countries that respect core labour standards, as it was deemed too close to institutionalising a linkage between international trade and labour (Trebilcock 2003, 291). In the same year however, work began at the ILO on what became the 'Declaration on Fundamental Principles and Rights at Work and Its Follow-up', adopted on June 18, 1998. The declaration privileged four core areas: freedom of association and right to collective bargaining, the elimination of child labour, the freedom from discrimination, and freedom from forced labour (ILO 1998), and declared that all member states have an obligation to implement the core conventions, even if they have not yet ratified them. On June 17, 1999, the ILO adopted Convention 182 on the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour. US officials played key roles in the development of both documents (Stigliani 2000, 183).

The long held goal of the US and other wealthy states to engender greater international compliance with core labour standards has thus been a difficult undertaking despite their relative power. This has occurred due to the lack of authority of the ILO and the consensual multilateral decision-making processes in place for GATT trade rounds. However, the establishment of the WTO, along with the increasing importance of international trade, heightened the sense of purpose of pro-labour states in this respect leading to this protracted debate continuing at the WTO, the major topic of this chapter. Thus far, I have only hinted at the complexity of the interests and moral values at stake in the linkage issue, and I now explore these in more detail by examining the ways in which the linkage debate has been conceptualised in the literature on labour standards and the WTO.

Conceptualising the trade labour linkage

The proposed WTO social clause has been debated as a human rights issue and in terms of its impact on economic efficiency and domestic policy autonomy. The institutional capacity of the WTO to administer such a provision has also been debated in the literature, though I choose to focus on the economic and human rights arguments, as these are most relevant for explaining the complementary goals of the ICFTU and states in advocating a WTO social clause. Appreciating the complexity and cross-cutting nature of the instrumental and normative motivations for the linkage provides a basis to understand the relationship between the NGOs supporting the social clause and pro-labour states. Ultimately, however, the multi-sided ‘alliance’ was insufficient to convince developing states to acquiesce to demands for a WTO social clause, simply because these standards were harmful to their competitiveness in the global economy.

Labour standards as human rights

For human rights advocates of a WTO social clause, all workers, regardless of nationality, are said to share “universal and inalienable rights”, some of which are specific to the workplace (Kolben 2006, 227). The particular labour standards upon which most proponents agreed should be tied to WTO rules refer to the first seven core ILO conventions relating to the abolition of prison labour, discrimination in employment and child labour, the right to organise and collectively bargain, equal remuneration for men and women, as listed above. Having received endorsement in a number of international arenas as *the* core labour standards, these conventions were also the basis of the ICFTU’s campaign for core labour standards at the WTO.

Though they claim to support labour standards, developing countries and some NGOs from developing countries have rejected human rights arguments for incorporating core labour standards into WTO rules. Southeast Asian nations in particular have argued that core labour standards are not universal norms but “western legal-philosophical constructs” (Stigliani 2000, 184). Deepmala Mahla of the Indian NGO CUTS for instance has stated that while it supports demands for improved regulation of labour standards, “regulation must be introduced domestically in order to do justice to cultural differences” (CUTS International 2000). These critics have thus contended that the *international* enforcement of these standards through the trade regime would constitute an intrusion into their sovereign affairs.

This has generated an impassioned response from labour standards proponents and other commentators, which have accused governments and NGOs peddling this view of elitism. Hughes and Wilkinson, for example, state that opposition to labour standards draws on “relativist arguments constructed to protect political elites in the face of growing demands for democratisation” (1998, 376). Similarly, Hensman claims that shunning universal values will only result in “backward, dependent econom[ies] in which the mass of the population cannot even

dream of possessing the commodities produced for export to developed countries” (2001, 442). In regard to India, Hensman also points out that human and labour rights are not foreign concepts, but gave rise to the nation’s Independence Movement and are enshrined in the Indian Constitution (2001, 442).

Economic growth, comparative advantage and international labour standards: coalescing norms and interests

The most hotly contested aspect of the trade labour linkage debate revolves around economic arguments about the costs and benefits for different WTO member states (see Salazar-Xirinachs and Martínez-Piva 2003; Trebilcock 2003; Kucera 2004; Howse *et al.* 2006). Social clause opponents argue that the promotion of a WTO social clause is a thinly disguised bid for greater trade protection for wealthy nations. Indeed, the push for the WTO to take a role in the enforcement of labour standards internationally is closely linked to growing concern about cheaper labour costs in developing WTO member states and efforts to reduce trade deficits and high unemployment in the G-7 nations (Charnovitz 1987, 565; Hughes and Wilkinson 1998, 376). As The Braithwaite and Drahos suggest, the US was seen by linkage opponents as simply attempting to get the GATT/WTO to do its “dirty work” (2000, 235).

Espousing this view, prominent economist and scholar Jagdish Bhagwati (2001) has stated that all trade linkage issues, including labour and environmental standards, are essentially discriminatory tools that do not belong at the WTO due to their potential to harm developing countries. According to this argument, a WTO social clause would reduce the comparative advantage of most developing states in the area of low labour costs and such an outcome would reduce overall economic efficiency (Fields 1994). Such provisions would also impose administrative costs on developing countries attempting to adhere to standards that are already well established and upheld in wealthy member states (Panagariya 2000).

Further, critics assert that a WTO social clause would only benefit privileged wage workers in the formal sector in developing countries, not those working in informal unregulated sectors, thereby demonstrating that first world labour standards supporters are only concerned about developing country workers with whom they must compete. Hernández (1998) further argues that a social clause would drive additional workers into the informal sector, which cannot be as easily monitored and regulated, while Kolben (2006) contends that only workers in export sectors may experience any benefit in their working conditions. A WTO social clause might also reduce the overall level of employment in developing countries as it may drive up the costs of employing labour. As such, it is claimed that the enforcement of higher labour standards would make little difference overall in the developing world because the increased cost of labour would reduce trade from developing countries to developed countries, leading to a decline in economic growth (Singh and Zammit 2000). This in turn, would result in capital flight and increases in unemployment,

thereby making workers in developing countries worse off (Summers 2001; Kolben 2006: 244). This argument against a WTO social clause is part of a larger argument frequently used by developing countries: that 'one-size-fits-all' approaches to international trade rules are inappropriate due to their different levels of development.

Linkage proponents have responded to accusations that a WTO social clause is protectionist (and would thus adversely affect the economic growth of developing states) by stating that this claim is not well supported by empirical evidence. In 1996, an Organisation for Economic Cooperation and Development (OECD) study entitled *Trade, Employment, and Labour Standards: A Study of Core Workers' Rights and International Trade* found that trade liberalisation was largely unaffected by the enforcement of core labour rights. On the contrary, it found that in the long term, adherence to the core labour standards could boost economic performance:

The view that argues that low-standards countries will enjoy gains in the export market share to the detriment of high-standards countries appears to lack solid empirical support. These findings also imply that any fear on the part of developing countries that better core standards would negatively affect either their economic performance or the competitive position in world markets has no economic rationale. On the contrary, it is conceivable that the observance of core standards would strengthen the long-term economic performance of all countries (Delechat and OECD 1996, 105).

Further, the greatest competition in regard to cheap labour is not between developing and developed nations, but *between* developing countries themselves (Hensman 2001, 437-438). This is evident in the apprehension on the part of developing countries regarding China's accession to the WTO, a nation that has an abundance of cheap labour. If, then, according to the OECD there is 'no economic rationale' to resist labour standards and labour competition is primarily between developing nations, a set of enforceable international rules might promote a 'race to the top' rather than a 'race to the bottom', which could serve the long-run interests of developing WTO members. Indeed, the ICFTU argues that the push for core labour standards is actually *anti*-protectionist because it would strengthen rule-driven trade liberalisation and reduce unfair competition or "social dumping" (ICFTU 1996).

Linkage proponents have additionally pointed out that two of the core labour standards, freedom of association and the right to collective bargaining, are 'enabling' human rights. As Dessing (2001) explains, enabling rights set process standards that seek to realise the conditions reflected in the assumptions underlying neo-classical economic models, including freedom of choice, equal bargaining power, and full information. They therefore have little bearing on production costs. In addition, none of the core labour standards encompass substantive standards that set wage levels or detail the specific content of health and safety standards. As the ICFTU affirmed,

[w]e do not advocate global minimum wages and working conditions - what we seek to stop is governments trying to gain competitive advantage through the repression, discrimination, and exploitation of workers, and instead to ensure that globalization does result in gains for all workers (ICFTU 1998)

Given the complex nature of the arguments surrounding the labour standards issue, the labour standards debate has not found an easy resolution at the WTO, having essentially divided both states (and to a lesser extent, NGOs) into opposing camps, mostly along developed/developing countries lines. Though linkage proponents present some evidence that a WTO social clause would *not* economically impair developing member states in the long run, these arguments have been completely ineffective in blunting the opposition of developing WTO members and some civil society groups. As a result, the issue has remained prominent in discussions within and outside the WTO since the establishment of the organisation. Having now examined the arguments contained in the debate over the incorporation of core labour standards at the WTO, the following section details the campaign activities of the ICFTU and other NGOs and outlines the developments at the Singapore, Geneva and Seattle ministerial conferences in regard to this issue.

Campaigning for core labour standards at the WTO

Key actors

Following the many previous attempts to have labour issues recognised at the GATT, the establishment of the WTO in 1995 offered both state and civil society actors a new opportunity to establish a formal link between labour standards and international trade rules. The ICFTU, the chief NGO proponent, is regarded as one of the most professional, legitimate and pragmatic NGOs that the WTO deals with (Anner 2001, 54). This is due to the representative nature of the organisation and the quality of its research output. As such, the ICFTU (now ITUC) has enjoyed a level of informal access to the WTO Secretariat exceeding that granted to other NGOs (Interview, ICFTU Representative, 2006). This has been a major advantage for the ICFTU in helping to get the core labour standards issue put on the WTO's agenda (Interview, ICFTU Representative, 2006).

In addition to the ICFTU, a number of other labour and non-labour NGOs were involved in the campaign, including the World Confederation of Labour (WCL), Union Network International, the European Trade Union Confederation (ETUC) and the International Trade Secretariats (ITSs). Independent of the ICFTU, the aid and development NGOs, Solidar, Oxfam, and Christian Aid, supported the campaign by directly targeting MNCs through developing and monitoring corporate codes of conduct in addition to lobbying the WTO and WTO member states for a social clause (Anner 2001, 15). For example, Oxfam's 'Make Trade Fair' campaign promoted workers' rights

through 'fair trade', while Solidar's development education campaign 'Globalisation of Rights: Justice and Equity in the Global Market', funded by the European Commission, was linked to the ICFTU campaign. Additionally, some national ICFTU affiliates played prominent, high-profile roles, particularly the AFL-CIO, the German Union Federation, the Congress of South African Trade Unions (COSATU), and Central Única dos Trabalhadores (CUT) in Brazil.

Among WTO members, the US, Norway and France were the strongest supporters of the linkage. During the Uruguay Round, and in the lead-up to the WTO's Singapore Ministerial Conference, the US, France and Norway, along with several other supportive European countries, urged all WTO members to provide a role for the WTO in commanding respect for core labour standards (O'Brien *et al.* 2000, 89). South Africa, one of the few developing countries with a strong and influential union movement, was also in favour. The advocacy of the UK and Germany was moderate, even following the 1997 election of the Blair Labour Government in the UK and the 1998 election of Chancellor Schröder's Social Democrats in Germany. Under their previous conservative governments, the UK and Germany had strongly opposed the incorporation of core labour standards into WTO rules. For all of the pro-labour states mentioned above, a major driving force behind their support of a social clause at the WTO was the significance of the labour movement as an interest group to the governments in power.

There were very close ties between the ICFTU and the states supporting a WTO labour standards clause. The Norwegian Foreign Ministry provided substantial funding for the ICFTU campaign via the Norway Labour Office (LO-Norway), an ICFTU affiliate (Anner 2001, 10). This was considered special funding that was not subject to the same rigorous supervision to which other projects were held, and this gave the ICFTU a great deal of flexibility to pursue their objectives with little interference or constraint from the Norwegian Foreign Ministry (Anner 2001, 4). As one ICFTU official stated, the alliance with Norway was extremely important for the campaign and meant that it was not necessary to devote resources to fundraising, as Norway essentially provided all the funds that the ICFTU required (Interview, ICFTU Representative 2006).

There were also strong links between the US government and the ICFTU's US affiliate, the AFL-CIO. During the 1990s, President Clinton promoted closer ties between the USTR and the AFL-CIO, appointing AFL-CIO president, John Sweeney, to the President's Advisory Committee for Trade Policy (Stigliani 2000, 180-83; Frutiger 2002, 69). At an ICFTU preparatory workshop prior to the WTO's 1996 Singapore meeting, Acting USTR Charlene Barshefsky told unionists that the USTR was "fighting your fight" (O'Brien *et al.* 2000, 90). Further, trade union representatives have also been granted places on official government delegations to WTO ministerial conferences. For example, at the Singapore Ministerial Conference, ICFTU affiliates were accredited to the delegations of the US, Canada, New Zealand, Denmark, Norway, Egypt, Tunisia, Burkina Faso and South Africa, giving them important access to government briefings and government officials (O'Brien *et al.* 2000, 89).

Most developing nations, especially in Asia, opposed the integration of core labour standards at the WTO. Led by the Indian government, the Group of 77 (G-77) of developing nations has been a vocal critic of the social clause and its economic impacts on the global South. In addition, a number of NGOs from developing nations, even including some ICFTU affiliate organisations, also opposed the social clause. Among these were the Indian National Trade Union Congress (INTUC) and Hind Mazdoor Sabha (HMS) (both ICFTU affiliates), as well as the international NGO, TWN, and the Indian NGO, CUTS. Organisations representing the international business sector also opposed a WTO social clause, for example, the ICC, Eurocommerce, and the Union of Industrial and Employers' Confederations of Europe (O'Brien *et al.* 2000, 91). Tables 4.1 and 4.2 below list the key states and NGOs that supported and opposed the trade labour linkage.

Table 4.1: Key states and NGOs supportive of a WTO core labour standards clause

Key states	Key NGOs
Belgium	American Federation of Labour and Congress of Industrial
Britain post-1998	Organizations (AFL-CIO)
Canada	Central Unica dos Trabalhadores (CUT) (Brazil)
France	Christian Aid
Germany post-1998	Congress of South African Trade Unions (COSATU)
Italy	European Trade Union Confederation (ETUC)
Norway	German Union Federation
South Africa	Global Union Group: comprising the ICFTU, the International
United States	Trade International Confederation of Free Trade Unions (ICFTU)
	Norwegian Confederation of Trade Unions
	Oxfam International
	International Trade Secretariats (ITSs)
	Trade Union Advisory Committee (TUAC)
	Solidar
	World Confederation of Labour (WCL)

Table 4.2: Key states and NGOs opposed to a WTO core labour standards clause

Key states	Key NGOs
Australia	Consumer Unity and Trust Society (CUTS)
Britain pre-1997	Eurocommerce
G-77	Hind Mazdoor Sabha (HMS), India
Germany pre-1998	Indian National Trade Union Congress (INTUC)
India	International Chamber of Commerce
Indonesia	Third World Network (TWN)
Pakistan	Union of Industrial and Employers' Confederations of Europe

Campaigning for core labour standards: key goals and strategies

For state and civil society linkage supporters, the major catalyst for the WTO campaign was the ongoing frustration with the weak enforcement capacity of the ILO and the new opportunities presented by the establishment of a strengthened international trade institution. Indeed, the strength of the WTO's DSB and the organisation's broad membership comprising developed and developing nations, meant that linkage proponents viewed it as a far more attractive arena than both the ILO and GATT in which to enforce core labour standards. As the ICFTU elucidated:

[t]here is no doubt that the WTO represents a real opportunity for a workers' rights clause campaign [...] Both the "package deals" and the way the WTO operates as an organization mean that the ICFTU and our affiliates can target our lobbying campaigns much more clearly (ICFTU 1998).

The ICFTU and other civil society supporters were also spurred on by the fact that they had been consulted very little during the Uruguay Round on the mandate of the WTO. In contrast, business representatives had been closely involved via the US and EU and had realised many of their goals in relation to the incorporation of agreements on services liberalisation (GATS) and IP rights (TRIPS) (see Ostry 2000).

The ICFTU and its supporters argued that a strong relationship existed between trade liberalisation and labour exploitation and that the violation of labour rights in export sectors was an unfair trade practice that should be addressed at the WTO (ICFTU 1999; O'Brien *et al.* 2000, 77; Seidman 2004, 111). The ultimate goal of the ICFTU and other civil society groups involved in the campaign was to have the WTO adopt a social clause that would commit states to respect the seven basic ILO conventions. Violations would then be punishable with trade sanctions. The ICFTU proposed that these standards be attached to all WTO accords, with the ILO retaining responsibility for monitoring compliance and the WTO's DSB to be used as the enforcement mechanism. Though the interpretation of labour rights violations as unfair trade practice helped

qualify the issue as suitable for being dealt with at the WTO, the ambiguity surrounding the definition of an *unfair* trade practice, as well as the WTO principles of national treatment and most-favoured nation (MFN) (which do not permit trade discrimination in production methods, including labour standards), ensured that the issue would not find an easy resolution at the WTO.

The first step taken by the core labour standards campaigners in working towards their goal was to lobby for the establishment of a WTO working group on trade and labour standards. As the ICFTU put it, this working group would discuss how “the rules of the WTO can ensure that the mutually reinforcing relationship between core international labour standards and the multilateral trading system are enhanced” (ICFTU 1996). Both the US and Norway shared this goal. Indeed, the AFL-CIO had been successful in lobbying the US Congress to demand that the President establish a working group on labour issues at the newly established WTO as part of the approval of the Uruguay Round in 1994 (van Roozendaal 2002, 100). Additionally, Norway’s provision of funding to the ICFTU was directed at boosting the legitimacy and support for the shared goal of establishing a labour standards working group (Interview, ICFTU Representative 2006). Thus, both state and NGO linkage supporters together began promoting their goals in preparation for the first WTO ministerial conference.

The WTO’s inaugural ministerial conference in Singapore in December 1996 was the first opportunity for supporters of the linkage to advance their goals. In preparation, the ICFTU organised meetings with affiliated unions (and with TUAC, ETUC, and representatives of the ITSs) to inform them of their intention to press for the incorporation of labour standards into the WTO architecture. They also briefed them on their campaign strategy, which was primarily based around lobbying WTO member governments to support the issue rather than embarking on an international public education and mobilisation campaign. For a pre-ministerial workshop on labour standards for ICFTU affiliates and other unions, the ICFTU invited other non-trade union NGOs to attend. However, invitations were only extended at the last minute on a casual basis (O’Brien *et al.* 2000, 86). During the workshop, a number of the non-trade union NGOs, including the Washington-based International Labor Rights Fund, the International Centre for Human Rights and Democratic Development (Montreal), and Solidar (Brussels), urged the ICFTU to form a Worker’s Rights Caucus in order to bring together NGOs and labour unions to strengthen their case in preparation for the Singapore conference (O’Brien *et al.* 2000, 86). The ICFTU agreed to the formation of the caucus and provided a representative from its Geneva office, as well as members of TUAC, and the ITSs.

In the two years preceding the WTO’s first ministerial meeting, outright opposition to the social clause proposal solidified among developing countries and a small number of NGOs. In May 1994, the Association of South East Asian Nations (ASEAN) for instance expressed their opposition at the ASEAN Labour Ministers Meeting. In their joint communiqué they stated

[...] that they are not opposed to the application of labour standards and are committed to improving the economic and social well-being of workers. However, they are concerned with the rigid imposition of labour standards and the use of rigid standards to stifle free trade and economic development which constitutes a new form of protectionism (ASEAN 1994).

This sentiment was also expressed by developing nations at UNCTAD and at a 1994 meeting of the United Nations Economic and Social Commission of Asia and the Pacific (ESCAP) (van Roozendaal 2003, 135; Kolben 2006, 237). The Indian government was particularly active in mobilising support against the linkage among other developing countries and in the media (Kolben 2006, 238-239). In January 1995, at the labour ministers conference of the Non-Aligned and Other Developing Countries group in Delhi, India helped organise the participants to issue the 'Delhi Declaration', a statement that proclaimed their unanimous opposition to a WTO social clause (Non-Aligned and other Developing Countries 1995). In November 1995, at the Group of 15 (G-15) summit in Buenos Aires, Indian Prime Minister Narasima Rao rallied other developing countries to oppose a social clause and instead lobby for development assistance from the industrialised countries (Kolben 2006, 240). The final joint communiqué from this meeting declared that

[t]he current and potential comparative advantages of developing countries and the benefits resulting from the Uruguay Round should not be impaired by new forms of protectionism in the guise of labour or environmental standards (G-15 1995).

The positions of some developing country civil society groups also hardened during this period. In March 1995, the Centre for Education and Communication (CEC), a prominent Indian NGO closely aligned with independent trade unions, organised a forum on the social clause with participants from NGOs, trade unions, and academia (Kolben 2006, 238). Though the participants argued about the benefits of supporting a WTO social clause, they all agreed the clause was motivated by protectionist Western goals, essentially echoing the Indian government (Kolben 2006, 238). Griffin, Nyland and O'Rourke explain that opposition against the social clause was softer at a larger meeting of trade unions from a broader range of nations at an October 1996 meeting of the Democratic Labour Caucus in Manila (2003, 489). The 26 participants from trade unions and labour organisations from Hong Kong, South Africa, the Philippines and Germany issued a statement entitled 'A Conditional "Yes" on the Issue of Social Clause in Trade Agreements', supporting the idea of linking trade with labour but wholly rejecting the use of trade sanctions to police compliance (SALINGAN 1996). Immediately prior to the Singapore conference, TWN organised two workshops entitled 'The WTO, Trade and Development' held in Penang, Malaysia on 30 November to 4 December and 'The WTO: Key Issues and Prospects' in Singapore on 6-8 December (TWN 1996). Based on the discussion at these meetings, the TWN

outlined its rejection of any discussion of 'new issues' including labour standards in *Joint NGO Statement on Issues and Proposals for the WTO Ministerial Conference*, which was released on the first day of the conference (TWN 1996). Thus, by December 1996 for the inaugural WTO ministerial meeting, the debate about labour standards had intensified.

The 1996 Singapore Ministerial Conference

At the 1996 Singapore Ministerial Conference, WTO members were clearly divided into two camps: those that sought to have labour standards integrated into WTO rules, and those who opposed it, fearing that the issue would adversely affect developing countries and become a stumbling block for progress at the new institution. As a result, the conference, from 9 to 13 December 1996, was dominated by the labour standards debate. The key point of discussion concerned the suitability of the WTO as an institution for enforcing labour standards and the impact of labour standards on the comparative advantage of developing countries in low labour costs. As the Indonesian Minister of Industry and Trade argued in his statement, "...to link labour standards and trade will easily run the risk of creating a new form of protectionism which does not help in meeting the ultimate objective of the WTO" (WTO 1996c). The representative of Pakistan also highlighted protectionist concerns:

[o]ur resistance to inject the issue of labour rights into the WTO stems from the fact that there is no proven relationship between trade and observance of core labour standards. A discussion of this issue in the WTO will merely encourage protectionist lobbies in the developed countries to resist the competitive advantage of low-wage countries through self-serving campaigns disguised as concern for the promotion of labour standards in the developing countries (WTO 1996d).

In support of developing members, a number of developed nations also opposed the labour linkage including the UK, Germany and Australia. Australia's Deputy Prime Minister (and Minister for Trade) for instance, contended that

[w]e need to be clear about which new issues are core WTO business. For Australia, the test of what is WTO business is whether an issue is potentially trade liberalizing. On this test we, like most WTO Members, do *not* support a working role for the WTO on labour standards or human rights. This is something for the ILO (WTO 1996e, original emphasis).

Despite the intense opposition, the US and the EU remained committed to their goal of establishing a working group on the matter. As Acting USTR Barshefsky argued:

[w]e must do more to acknowledge that there is a mutually reinforcing relationship between an open trading system and respect for core labour standards. That is why we hope to have an agreement that the WTO should, in cooperation with the International Labour Organization, examine in greater detail the important nexus between trade and labour standards (WTO 1996f).

However, it quickly became evident from these statements, delivered on the first day of the conference, that the intensity of opposition from developing countries, especially the South Asian bloc of India, Pakistan and Sri Lanka (backed up by the TWN-led coalition of NGOs) had rendered the possibility of instituting a working group on labour standards very unlikely. Instead, the debate shifted to whether there should be a mention of labour standards in the final ministerial declaration, and what form this might take.

While WTO member states battled each other over this issue on the conference floor, on the sidelines, NGOs that had been accredited to attend the conference supplemented the debate. Each morning of the ministerial, the ICFTU and the Workers' Rights Caucus held meetings following the ICFTU's briefings. The Workers' Rights Caucus issued press releases, attended other NGO meetings and hosted a workshop for all NGOs on workers' rights. However, the release of the joint statement from the TWN-led coalition of NGOs on the first day of the conference (*Joint NGO Statement on Issues and Proposals for the WTO Ministerial Conference*), supported by 34 NGOs, dented the push for progress on labour standards. This statement mirrored the developing countries' statements claiming that labour standards would be used as a protectionist tool against developing countries. Indeed, the overarching goal of the TWN was to restrict, not expand, WTO powers:

[c]ountervailing measures imposed unilaterally by powerful countries on weaker nations (and hardly conceivable, the other way around) would lack legality, moral authority and effectiveness to lead to any effective improvement in workers' conditions or human rights situations in poor or rich countries... We therefore reject the idea of introducing labour standards or a "social clause" in the WTO system (TWN 1996).

Though TWN and its supporters were sympathetic to the overall goal of improving compliance with core labour standards, they agreed with developing WTO members and other linkage opponents that the ILO, not the WTO, was the appropriate body to deal with this issue. Following the release of the TWN statement, the ICFTU and TWN held a closed-door meeting at which the ICFTU argued that the work of the ILO needed to be supplemented by the WTO's enforcement powers. They also acknowledged that although the WTO was not an ideal institution in this regard, it was better than the status quo (O'Brien *et al.* 2000, 87). However, their differences could not be bridged. The TWN perceived the issue in the context of broader inequalities between the

developed and developing world, while the ICFTU was more pragmatic in seeking to improve workers' rights internationally regardless of the institutional venue.

Ultimately, while the proposal to form a labour standards working group at the WTO's Singapore meeting failed, linkage supporters managed to secure a mention of core labour standards in the final text, largely due to the role of South Africa in influencing other developing states to support this outcome (O'Brien *et al.* 2000, 100). The final ministerial declaration reads:

We renew our commitment to the observance of internationally recognized core labour standards. The International Labour Organization (ILO) is the competent body to set and deal with these standards, and we affirm our support for its work in promoting them. We believe that economic growth and development fostered by increased trade and further trade liberalization contribute to the promotion of these standards. We reject the use of labour standards for protectionist purposes, and agree that the comparative advantage of countries, particularly low-wage developing countries, must in no way be put into question. In this regard, we note that the WTO and ILO Secretariats will continue their existing collaboration (WTO 1996g).

However, in exchange for accepting this text, developing nations requested that the Singaporean Chairman of the conference, Yeo Cheow Tong, provide an interpretation of the text to clarify that the WTO was not mandated to undertake new work on the issue, and nor did it set up the WTO to establish a trade-labour link in the future. In response, the Chairman issued a strongly worded concluding statement:

[...] there is no authorization in the text for any new work on this issue [...] Some delegations had expressed the concern that this text may lead the WTO to acquire a competence to undertake further work in the relationship between trade and core labour standards. I want to assure these delegations that this text will not permit such a development (WTO 1997, 14).

This was interpreted by the UK, India, Malaysia and several other Asian states to mean that the issue would not be revived at the WTO. As Malaysian Trade and Industry Minister Rafidah Aziz declared, "[t]here will be no more talk of labour standards in the WTO. Nobody will in future make us discuss labour standards here" (Khor 1997). In contrast, at a post-Conference press briefing, Acting USTR Barshefsky said that the Chairman's closing statement reflected his personal view, and did not reflect the US understanding of the text, nor did it carry any legal weight. As Barshefsky continued to argue:

[w]e must recognise that issues of workers' welfare and worker rights are absolutely part of the trade debate, whether we like it or not ideologically...When we have such an important subject, it will always remain an important subject in the WTO (Khor 1996).

Similarly, the Vice President of the European Commission, Sir Leon Brittan, stated that "we regard core internationally recognised labour standards as essential human rights [...]. This dialogue must now be taken further" (Khor 1996).

Overall, the events at the Singapore ministerial represented a mixed outcome for linkage proponents. On the one hand, the final declaration recognised the importance of the issue, but stated that the WTO was not the appropriate international body to deal with it, and thus did not take any steps towards instituting a social clause. As, Howse *et al.* have remarked, "[n]o one believed that there had been a mass conversion at Singapore" (2006, 184). Other commentators have argued that the outcome was a 'strong rebuffal' for the labour standards campaigners because the text did not specify how the cooperation between the WTO and ILO would proceed, nor how members' observance to core labour standards would be achieved (Griffin *et al.* 2003, 470; Haworth and Hughes 2004: 131).

Nevertheless, linkage supporters did avoid the worst possible outcome of not getting any mention of labour into the final declaration, which would have closed the issue off, thereby limiting opportunities for future discussion on the matter at the WTO. As such, this outcome allowed the US and Europe to be seen to achieve some progress on the issue without disaffecting business interests (O'Brien *et al.* 2000, 90). For the ICFTU, the statement at Singapore was a "small, but significant step forward. It is not the Havana Charter; but it is the first time in the fifty-year history of GATT that a commitment to core labour standards had been made" (ICFTU 1998). Most importantly, the differing interpretations of the Singapore outcome ensured that the issue would continue to be discussed at the WTO.

The 1998 Geneva WTO Ministerial Conference

For the ICFTU, the Singapore conference highlighted the need to alter aspects of the campaign strategy, in particular to increase communication with ICFTU affiliates, especially those in developing nations, with a view to persuading developing country governments to support the social clause. To do so, the ICFTU established the Task Force on Trade, Investment and Labour Standards (TILS) comprising representatives of ICFTU affiliate organisations, the ITSs, ETUC, and TUAC (ICFTU 2004, 118). TILS, financially supported by the Norwegian foreign ministry via LO-Norway (Anner 2001, 45), set up an email network and an information database that provided updates to all campaign affiliates. Meanwhile, during 1997, the ICFTU sought to pressure individual WTO member states by reporting on their adherence to core labour standards

(ICFTU). The ICFTU timed the submission of its reports to coincide with the WTO's own trade policy reviews of member states.

In preparation for the Geneva ministerial, the ICFTU forged a close working relationship with the NGO Solidar, provided key campaign information to other NGOs, and launched a targeted campaign highlighting child labour issues. Given the ceremonial purpose of the conference (celebrating the fiftieth anniversary of GATT) the ICFTU simply aimed to keep labour standards on the agenda. In attempting to do so, TILS organised a three day pre-ministerial workshop to prepare unionists to lobby their governments to express their support for the core labour standards issue at the WTO meeting (Anner 2001, 49). Significantly, the TILS conference was addressed by the Director-General of the WTO, the Director-General of the ILO, as well as the Secretary-General of UNCTAD. At the conference, ICFTU affiliates COSATU of South Africa and CUT of Brazil suggested that the ICFTU broaden its engagement with the WTO to include issues facing developing countries, as well as environmental issues and NGO participation in the WTO's DSB. Their rationale was that this approach would demonstrate that the ICFTU was not just about furthering its own interests, but genuinely cared about the problems faced by developing countries in the international trade regime, as well as the issues for which other major NGOs were campaigning. However, with the exception of its work with Solidar, this suggestion was not taken up. The ICFTU maintaining its top-down approach to information-sharing, and did not substantially alter its engagement with other international NGOs.

At the Geneva ministerial held from 18 to 20 May, 1998, labour standards gained a prominent place in the discussions. Several heads of state, including US President Bill Clinton, EU Director-General Trade Sir Leon Brittan, British Prime Minister Tony Blair, USTR Barshefsky, Norway's Prime Minister Kjell Magne Bondevik, and South African president Nelson Mandela all made formal statements in which they expressed support for core labour standards. Clinton voiced his desire to see the WTO and ILO convene a special meeting to address the labour standards issue, which was essentially a joint US/EU proposal:

[...] the WTO and the International Labour Organization should commit to work together, to make certain that open trade lifts living conditions, and respects the core labour standards that are essential not only to workers' rights, but to human rights everywhere. I ask the two organizations' Secretariats to convene at a high level meeting to discuss these issues (WTO 1998a).

Similarly, Norway's Prime Minister Kjell Magne Bondevik also conveyed his government's support for increased cooperation between the WTO and ILO:

Although ILO has the main responsibility, labour standards should also be an issue for the WTO. By working towards continued improvements, in the rules concerning these issues,

we will strengthen the credibility of the system and demonstrate the need for international cooperation in these areas (WTO 1998b).

Meanwhile, South African president Nelson Mandela urged other developing nations to consider the proposal:

There can be no refusal to discuss matters such as labour standards, social issues and the environment, but equally all must be prepared to listen carefully before judgments are made. If developing countries feel that there is nothing to gain except further burdens, then it will prove difficult to deal with these crucial matters (WTO 1998c).

Despite the presence of several heads of state and the high profile of the TILS pre-ministerial conference, little was achieved at the WTO's second ministerial conference, primarily due to its ceremonial nature. Nonetheless, the meeting did foreshadow the ILO's International Labour Conference in June 1998 at which members agreed upon the Declaration on Fundamental Principles and Rights at Work and its Follow-up, the most concrete international statement on labour standards and trade to date (ILO 1998). Ultimately, the Geneva conference is noteworthy in that paved the way for the 1998 ILO statement and revealed that the issue still occupied a high place on the agenda of several WTO members. In this respect it provided a stepping-stone for the discussion of the issue not only at the ILO but at the WTO's Seattle ministerial the following year, where intense discussions on the matter were held.

The 1999 Seattle WTO Ministerial Conference

Following the Geneva ministerial, there was a shift in the international debate away from the idea of a social clause backed up by trade sanctions to a more general appeal for core labour rights to be respected. In December 1998, the ICFTU held a three day seminar in Geneva to engage in campaign strategising for the WTO's Seattle Ministerial Conference. The background document for the seminar, entitled 'Globalisation, Investment and Labour Standards', detailed many of the campaign activities to be pursued, which revolved around harnessing greater support among affiliates and other NGOs in developing nations (Anner 2001, 49). The ICFTU published its own workers' rights clause proposal entitled 'Building Workers' Human Rights into the Global Trading System', which was used as a key educational and organising tool (ICFTU 1999a). In toning down its language regarding trade sanctions, the booklet focused on amending laws rather than imposing trade measures, and suggested that the ILO work with the WTO to determine whether a country is in violation of core labour rights (ICFTU 1999, 44-46; Anner 2001, 14). This softer approach was also reflected in the creation of the UN Global Compact, first announced by United Nations Secretary-General Kofi Annan in January 1999. The Global Compact encourages business to voluntarily adopt and report on their progress towards standards in the areas of human rights,

labour, the environment and anti-corruption (UN Global Compact 2007). Many NGOs however, such as Global Trade Watch Australia, have expressed strong doubts about the Global Compact due to its non-mandatory reporting provisions (Interview, Global Trade Watch Australia Representative 2005).

In early 1999, the ICFTU organised a number of campaigning activities in developing countries to increase support for the campaign. It hosted regional and sub-regional workshops at which affiliates were informed about the ICFTU's campaign goals in relation to labour standards. As Anner explains, a large proportion of the campaign budget was devoted to hosting regional meetings: seven seminars were held during 1999, in South Africa, Brazil, Sri Lanka, Tunisia, Prague, Ghana, and Jamaica (2001, 12). The ICFTU encouraged participants to lobby their governments on the issue and request that they be allowed to join official government delegations to the Seattle ministerial. In September 1999, a three-day meeting of trade unionists from Malaysia, the Philippines, Indonesia, Bangladesh, India, Pakistan and Singapore was held in Malaysia. Its purpose was to allay fears among unionists in these countries that the campaign was to impose a global minimum wage, and explain why the WTO (not just the ILO) needed to be involved in the issue (Anner 2001, 13).

Despite the ICFTU's attempts to smooth discord within civil society over a WTO social clause, the TWN-led coalition of NGOs remained a vocal critic. In September 1999, the TWN issued a public statement, *Enough is Enough: Third World Intellectuals and NGOs' Statement Against Linkage*, expressing their opposition to the WTO taking on new 'non-trade' issues, including labour standards (TWN 1999). Supported by over 100 academics, the statement conveyed "unambiguous opposition" to any linkage between labour and trade at the WTO. Echoing developing country governments, the statement argued that first world protectionists would utilise a labour standards clause to decrease the level of developing country imports regardless of the goals of "the morally-driven human rights and other groups". Additionally, the statement also accused labour standards proponents of highlighting labour rights abuses in the global South, while ignoring violations in the North (Griffin *et al.* 2003, 477). For example, the sweatshops in the textiles apparel industry and the rights of migrant labour in developed countries were not dealt with, while issues such as child labour "where the developing countries are expected to be the defendants rather than plaintiffs" were in focus. For these reasons, the statement argued that the ILO, not the WTO, should deal with the issue.

In response to the TWN statement, the ICFTU issued a statement entitled *Enough Exploitation is Enough: A Response to the Third World Intellectuals and NGOs' Statement Against Linkage* (ICFTU 1999b). The statement argued that the conclusions drawn in TWIN-SAL were flawed, and that it offered nothing to address current abuses of labour rights. The ICFTU also pointed out that the chosen labour standards were far from arbitrary, since they had been repeatedly endorsed by

UN member states. Further, the ICFTU accused the TWN-led coalition of NGOs of lending support to corporate interests and governments that abuse labour rights:

[...] there are far too many such interests and governments opposing core labour standards at the WTO for it to be a coincidence. It is those parties which have most to gain from the perpetuation of a status quo which enables them to continue their exploitation of workers without any constraints (ICFTU 1999b).

Moreover, Griffin *et al.*'s analysis of the TWN statement casts doubt about the legitimacy and representativeness of the groups involved and their links to workers, especially compared to the ICFTU, whose membership is put forward as evidence that it represents working people:

[...] an examination of the TWIN-SAL statement reveals that, of the 99 signatories, 57 are associated with universities or research centres; 31 are professionals associated with NGOs in the areas of aid and development, consumer protection and the environment; three are lawyers, two are public servants, two are from church organisations, one a retired foreign secretary, one a judge and two unknown. In short, those who signed the document opposing the introduction of instruments designed to protect the fundamental human rights of workers did not include any workers or worker representatives (2003, 477).

The exchange of NGO statements exposed the sharp divides that still existed among civil society groups on the issue, which the ICFTU's softer approach on trade sanctions had not managed to ameliorate. Thus, while the ICFTU was able to mobilise some additional support through stepping up its campaigning activities among affiliates and other NGOs, the TWIN-SAL statement somewhat weakened the legitimacy of the ICFTU's position going into the Seattle ministerial by diffusing the debate.

Renewed debate among member states on core labour standards began in the preparatory meetings for the Seattle ministerial held in Geneva. In October 1999, the US announced its key priorities for Seattle: to establish a 'Trade and Labor' working group at the WTO (to monitor the observance of internationally recognised core labour standards) and make the ILO an observer to the WTO (WTO 1999a). However, the US did not call for the enforcement of labour rights with trade sanctions. Instead, it pitched the working group proposal as a mechanism for the realisation of the Singapore commitment and the 1998 ILO Declaration (WTO 1999a; Stigliani 2000, 189). In signalling that the issue was important to the US, and with the US Presidential elections looming, Clinton used his State of the Union address in January 1999 (as well as his January 2000 address following the Seattle meeting) to press the necessity of a firmer link between labour standards and the international trading system (Clinton 2004; see also Clinton 1999). The prominence given to the issue was reflected in the bolstering of the US Department of State's labour function: an

Advisory Committee on Labor Diplomacy and a new high-profile position entitled Special Representative for International Labor Affairs were created (Stigliani 2000, 181).

Though highly supportive of labour standards, the EU was unwilling to support the US call for a labour standards working group at the WTO. This was due to their recognition of the opposition among developing countries and thus the slim chance that a WTO working group could be achieved. Instead, in early November, the EU informed the WTO Director-General of its decision to support a joint standing forum between the WTO and the ILO on trade, globalisation and labour issues (WTO 1999b). The EU also suggested the use of positive incentives in the form of additional trade benefits to developing countries that respected core labour standards. In the meantime, developing countries in the G-15 and G-77 separately announced that they remained opposed to discussing the issue at the WTO (Anner 2001, 53; ICTSD 1999).

Once the Seattle conference began on 30 November, the US, the EU (especially Norway, France and Italy), pressed for a joint WTO/ILO forum to investigate the issue, while developing nations reiterated their opposition. From the outset, the G-77 informed members that “developing countries are firmly opposed to any linkage between labour standards and trade [...] the question of labour standards should be dealt with by the competent international organizations and not by the WTO” (WTO 1999c). Further, Malaysia made the point that linkage contradicted the MFN principle, a cornerstone operating principle of the organisation (WTO 1999d). The ICFTU again had an active presence both inside and outside the conference and a number of nations, including Norway, Canada and the US, had allowed trade unions and other NGOs onto their official government delegations (Anner 2001, 48). Significantly, President Clinton also met with AFL-CIO president John Sweeney during the ministerial (Knowlton 1999).

Outside the ministerial meeting, 30,000 street protesters congregated to rally against the major goal of the ministerial conference; the launch of a ‘Millennium Round’ of trade negotiations. The AFL-CIO sponsored the main protest on the opening day of the ministerial (Knowlton 1999). However, the protests, which attracted a diverse mix of environmentalists, human rights advocates, protectionists, and regular citizens, were not limited to the city of Seattle; they were part of a global day of action against neo-liberalism, involving 111 protest events in 22 countries in 97 cities across the globe (Wood 2004, 86). The morning inaugural session on 30 November had to be abandoned because of the protests, while the plenary session, which was to start in the afternoon on the same day, was held under heavy police protection. The Seattle protests, which became known as the ‘Battle of Seattle’, received extensive media coverage, which heightened public awareness of the impact of international trade negotiations and the WTO. As Stigliani surmises, “many people who had previously been unaware of or paid little attention to the WTO now have some sense of the purpose of the organization and of the debate over the relative benefits and costs of the worldwide free trade that it seeks to promote” (2000, 178). Ultimately, the protesters were

expressing their views about the same issues being discussed by member states inside the conference.

On December 1 1999, day two of the Conference, the *Seattle Post-Intelligencer* published an article detailing an interview with President Clinton in which he infamously commented:

What we ought to do first of all is to adopt the United States' position on having a working group on labor within the WTO, and then that working group should develop these core labor standards, and then they ought to be a part of every trade agreement, and *ultimately I would favor a system in which sanctions would come for violating any provision of a trade agreement* (Paulson 1999, emphasis added).

This comment resulted in widespread anger from developing countries, reigniting their accusations that a WTO social clause was a protectionist drive. Clinton's remarks were also said to have stunned US negotiators and compromised the softer approach that had been adopted by labour standards proponents in regard to sanctions in the lead-up to the conference (Burgess 1999; Greenhouse and Kahn 1999).

On 2 December, day three of the conference, despite Clinton's comments to the media regarding trade sanctions, the discussion on trade and labour standards, chaired by Vice-Minister Anabel González of Costa Rica, proceeded (WTO 1999e). From the outset it was clear that the US proposal for a working group lacked support and it was thus not considered. Instead, members discussed the EU proposal for a joint ILO/WTO standing forum that was explicitly to be outside the WTO structure. However, even this proposal invoked strong opposition from several developing countries. The Indian Minister of Commerce Murasoli Maran for example, responded by declaring "[n]o, I cannot drink a drop of poison" (Pani 1999 in Kolben 2006, 242). However, Stigliani explains that some African and Latin American delegations did not perceive the EU proposal as threatening as a working group inside the WTO, and attempted to help develop a compromise proposal, while some Southeast Asian nations were even willing to consider a 'one off' meeting at the WTO on labour issues (Stigliani 2000, 190). However, others contend that the texts put together by the Green Room chairpersons did not accurately reflect the debate on the floor, thereby making the labour standards discussion appear more positive than it actually was (Raghavan 1999). In any case, the EU compromise proposal was far less than the US was willing to consider.

On 3 December, day four of the conference, 35 countries attended a final meeting on the labour issue. At the meeting, the Costa Rican chairperson proposed the establishment of a discussion group on the matter that would not report to the WTO nor would the WTO be responsible for any organisation required to establish the group (Anner 2001, 54). The text of this proposal, a lesser version of the EU proposal for a joint ILO/WTO standing forum, became known as the 'Costa

Rica Document' (Anner 2001, 54; Haworth 2002, 175) and was apparently viewed in a relatively positive light by most members involved in the discussions. As Griffin *et al.* note,

[d]espite the publically voiced opposition, and the fact that while no transcripts are available, it is reported that, in this private domain, developing country governments were much more willing to explore the possibility of trade-offs that could render a trade-labour rights link acceptable" (Griffin *et al.* 2003, 471).

Indeed, it is now widely accepted that a fragile consensus had been reached on the Costa Rica Document, though this was ultimately overshadowed by debates on other issues at Seattle.

In addition to labour standards, the Seattle ministerial was notable for its intense debate on agriculture, anti-dumping subsidies and the Singapore Issues, which led to the collapse of the meeting. While it is often commented that the 'Battle of Seattle' protests brought an end to the meeting, (it did indeed make it difficult for some delegates to access the conference venue) it is more accurate to see the protests as emblematic of the intensity of the debates inside the conference. Thus, with agreement allegedly within reach on the 'Costa Rica Document', labour standards was not the straw that broke the camel's back. Likewise, Clinton's comments to the press regarding trade sanctions to enforce labour standards issue was not the fatal blow, as suggested by commentators such as Trebilcock (2003, 293). Nevertheless, there was still debate over whether the conference had been positive for the labour standards cause. While the AFL-CIO was optimistic that Seattle had highlighted labour issues (Stigliani 2001), others charged that it represented a backwards step for the labour linkage issue given the "angry 'in house' confrontation" that occurred at the meeting (Haworth and Hughes 2004, 132).

Following Seattle, a number of factors conspired against progress at the WTO on the linkage issue. Most significantly, the ICFTU effectively lost a key ally when a Republican administration that was hostile to the labour linkage took office in the US. Despite this, the ICFTU campaign for core labour standards and other NGO proponents continued their push for the WTO to deal with the issue. In 2001, at the WTO's fourth ministerial conference in Doha, WTO member states reaffirmed their commitment to respect core labour standards, as originally pledged at the 1996 Singapore Ministerial Declaration on November 14, 2001:

[w]e reaffirm our declaration made at the Singapore Ministerial Conference regarding internationally recognized core labour standards. We take note of work under way in the International Labour Organization (ILO) on the social dimension of globalization (WTO 2001a).

To date, this is the last mention of labour standards at a WTO ministerial conference. Though the ICFTU pushed for discussion of core labour standards at the 2003 Cancún conference (ICFTU

2003), this did not amount to any progress because, like Seattle, the Cancún ministerial collapsed over disagreements over agriculture and the Singapore Issues. At the 2005 Hong Kong ministerial, there was no substantial discussion of core labour standards, though an ICFTU representative considered paragraph 56 of the Hong Kong Ministerial Declaration concerning WTO cooperation with relevant UN agencies a step forward (Interview, ICFTU Representative 2006; see WTO 2005b). The view of WTO officials at this time was that any foreseeable chance of the linkage being realised had been put on the backburner (Haworth and Hughes 2004, 133).

Commanding international respect for core labour standards: strategic arena shopping

Despite not achieving their goals at the WTO, the ICFTU and pro-labour states did contribute towards developments on the issue in other international arenas. As recognised by union advocates, pursuing the trade-labour linkage issue at the WTO helped keep the issue of compliance with international labour standards alive and generate debate in other international areas (Interview, ICFTU Representative 2006). In fact, the ICFTU may have been aware of the limitations of overseeing action at the WTO on the issue from the beginning, and instead held the more realistic goals of increasing awareness of labour standards violations and putting pressure on the states that do not uphold the ILO conventions. However, this hypothesis requires further research.

The labour standards campaign directed at the WTO encouraged a number of international organisations to respond to the issue. The UN developed the Global Compact, a global corporate citizenship initiative to encourage businesses to respect universally accepted principles in the areas of labour, human rights, the environment and anti-corruption (UN Global Compact 2007). There has also been increased emphasis on labour rights issues at the World Bank and at Asia-Pacific Economic Cooperation (APEC) meetings. Most significantly, the WTO labour standards campaign created the environment for greater action at the ILO, as the organisation stepped up efforts to remain the dominant institution in regard to labour issues (O'Brien *et al.* 2000, 102). For example, following the WTO's Singapore conference in 1996, the Governing Body of the ILO began monitoring compliance of all ILO members with core labour standards regardless of whether they had ratified the conventions. The WTO campaign was also a major force behind the ILO's adoption in 1998 of the Declaration on Fundamental Principles and Rights at Work and its Follow-up (Anner 2001, 44). Additionally, the events at Seattle created conditions that made approval of the ILO's maternity clause possible in June 2000. Most interestingly, in their attempts to keep the labour issue out of the WTO, developing countries that had rallied against the trade-labour linkage at the WTO supported these ILO accords and participated in discussion over labour issues in these other international arenas. In this respect then, the ICFTU campaign targeting the WTO resulted in some very positive developments at other international arenas.

Another result of the ICFTU campaign was that it provided a normative rationale for the US and EU to incorporate labour standards clauses into their regional and bilateral trade agreements (Wilkinson and Hughes 2000, 272). In the US, Congress inserted language into the 2002 Bipartisan Trade Promotion Authority Act, which directed the US President to include labour standards provisions in all bilateral trade agreements. Rules regarding labour standards now exist in a number of US bilateral trade agreements including those with Australia, Cambodia, Jordan, Chile, Singapore, Bahrain, Argentina, Morocco, and in the Central America Free Trade Agreement (CAFTA) (Brathwaite and Drahos 2000; Griffin *et al.* 2003, 471 and 491). However, it should be noted that the provisions in the majority of these agreements require each trading partner to enforce their own labour laws. Additionally, the ICFTU campaign provided the impetus for the US and EU to modify their GSP benefits to preference developing nations that uphold ILO conventions (Griffin *et al.* 2003, 492). The EU's GSP system now includes an incentive system that offers additional tariff concessions to developing countries that have complied with ILO conventions 87, 98 and 138 (Tsogas 2000).

Further, the ICFTU campaign and the increasing number of NGOs dedicated to monitoring the activities of MNCs has resulted in greater attention on the part of the business sector to codes of conduct in relation to workers' rights. Following the Singapore Ministerial Conference, labour unions and NGOs renewed their campaigns to address the exploitation of workers in the global garment and sportswear industries (Interview, Oxfam Community Aid Abroad Australia Representative 2005). These include the Clean Clothes Campaign, the Australian FairWear campaign, the US Campaign for Labour Rights, and the UK-based Labour Behind the Label network (Clean Clothes Campaign; Fairwear; Campaign for Labor Rights; Labour Behind the Label). The Clean Clothes Campaign for instance, comprises a vast number of organisations working to put pressure on various MNCs to adopt ILO core labour standards and adhere to Article 23 of the Universal Declaration on Human Rights (Clean Clothes Campaign). In attempting to improve compliance with core labour standards then, trade unions and other NGOs have adopted a multi-pronged approach targeting international institutions, states, and particular industries and MNCs.

Conclusion

The ICFTU's 'Campaign on Labour Standards and Trade' played an important role in the international debate about the trade-labour linkage in the WTO context. Indeed, the campaigners helped to repeatedly get the issue on the WTO agenda for discussion among member states. Though the general literature on NGOs in international politics emphasises the importance of unity and shared goals among activists (Klotz 1995; Price 1998; Khagram *et al.* 2002), for this case, weaknesses in the ICFTU's top-down campaign style did not obstruct their ability to get the issue onto the WTO agenda. Instead, the ICFTU's chief mechanism of influence was the utilisation of

its close ties to the governments of the US and Norway, which enabled them to contribute to this international debate.

Despite their capacity to repeatedly get the issue on the WTO's agenda, the ultimate goal of the ICFTU and pro-labour states – to achieve progress on linking labour standards to trade rules at the WTO – met with little success. A key factor in this regard was the complexity of the labour standards issue itself, which involved normative values in regard to universal human rights and competing economic interests among states, particularly in relation to the enforcement of labour regulations through trade sanctions. Indeed, the economic interests at stake made it extremely difficult for the ICFTU to successfully project their interpretation of the issue as one of fundamental human rights, a recognised source of leverage for NGOs in waging transnational campaigns (Keck and Sikkink 1998). However, the ICFTU and pro-labour WTO member states were completely ineffectual in masking the instrumental motivations underpinning their objectives. Indeed, the opposing NGO campaign led by TWN undermined the efforts of the ICFTU in this respect and questioned their pragmatic approach to tackling this issue at the WTO. The flaws in the ICFTU's campaign and the links between pro-labour states and the ICFTU (and its affiliates) are explored in greater depth in Chapter 7.

Another key factor inhibiting progress on the issue at the WTO was the organisation's decision-making procedures, which are based on consensus and the single-undertaking approach. Unlike for the investment and access to campaigns (detailed in Chapters 5 and 6 respectively), these procedures were unreceptive, even obstructive, for labour standards proponents. They neutralised the power of the developed members advocating the labour clause, essentially preventing the will of a minority of wealthy states to trump that of the majority of developing members who opposed the issue. Indeed, this case study confirms that powerful states do not always dominate multilateral policy-making arenas, especially those in which decisions are taken by consensus.

Since the intense discussions over the issue at Seattle, the WTO's position is that the trade-labour linkage is outside its competencies, and that the ILO, not the WTO, is the appropriate institution for dealing with labour standards. Though the debate at the WTO has stalled for now, the controversy over labour issues in the context of international trade is likely to remain a simmering issue in international trade governance. In addition to positive developments at the ILO, pro-labour states are insisting that labour standards provisions are built into bilateral and regional free trade agreements where they have greater influence. Meanwhile, the ICFTU and other NGOs are continuing to press for change by monitoring and reporting on states and MNCs that violate the core labour standards.

Chapter 5

SAFEGUARDS PENDING: TRIPS AND THE ACCESS TO MEDICINES CAMPAIGN

Introduction

Through their access to medicines campaign that began in the late 1990s, NGOs such as MSF, Oxfam International and Health Action International (HAI) significantly contributed to the international debate over the application of IP rules to essential pharmaceutical products required in developing nations. In highlighting the problems faced by developing nations in implementing the WTO's TRIPS Agreement, NGO campaigners utilised numerous political opportunities to mobilise supporters and engage developing country governments to contest the issue in the WTO arena, thereby playing a role in the re-evaluation of the agreement itself. Specifically, the NGO campaign helped unleash a series of developments at the WTO on the issue including the 2001 Doha Declaration on TRIPS and Public Health, the 'August 30 temporary waiver' in 2003, and most significantly, the *first ever amendment* of a core WTO agreement in the form of the '6 December Decision' in 2005 (WTO 2005c).

In exploring the relationship dynamics between NGOs and developing states in the context of the international trade regime, this case study serves the goals of this thesis by illustrating that NGOs can play roles in the international trade policy process at the agenda-setting stage, despite their lack of formal status at the organisation. In contrast to the labour standards case study (see Chapter 4), it also provides the opportunity to examine the different roles that NGOs play in the international trade regime when their objectives align with less powerful states.

The WTO's TRIPS Agreement, which came into force with the establishment of the WTO, is the first multilateral accord to link IP rights with international trade. The TRIPS Agreement defines the minimum standard of IP protection for all WTO members and requires the establishment of effective national patent regimes to uphold internationally-agreed standards for IP rights for all types of goods, including pharmaceutical products. The WTO's adoption of an IP regime has meant that for the first time, international disputes over IP rights can be adjudicated in an effective and legitimate multilateral forum: the WTO's dispute settlement system. In contrast to most developed nations, where IP protection is already well established, many developing countries have few procedures in place for administering and enforcing IP rules and are, for the most part, importers, rather than producers, of patented technology. The implementation of TRIPS has therefore imposed serious costs on developing countries, and for this reason, its intended application to all members by 2006 was highly contentious. At the same time, corporations that

hold IP rights, especially in the area of medical technology, have been concerned about the protection of their patented innovations in foreign markets and the associated loss of returns on their investments.

The greatest source of concern for developing countries has been in regard to the application of the TRIPS Agreement to patented medicines required in developing countries. In particular, the controversy has centred on the circumstances under which a member state may invoke the in-built TRIPS safeguards or 'flexibilities' to override patents for pharmaceutical products in order to provide citizens with access to affordable generic versions of essential medicines for HIV/AIDS, tuberculosis and other life-threatening diseases. The ambiguity over the appropriate use of the TRIPS safeguards revolves around whether a public health crisis constitutes a 'national emergency', one of the few circumstances under which the TRIPS Agreement allows a nation to override a patent. As the major sources of new technology, wealthy industrialised nations, especially the US, have utilised this ambiguity to pursue the interests of US-based research pharmaceutical companies, pressuring nations such as South Africa, Thailand and Brazil to uphold their patents and refrain from employing the TRIPS safeguard measures.

Although a number of scholarly accounts recognise the NGO role in the outcome of the TRIPS and public health issue, most highlight other aspects of the case. For example, Frederick M. Abbott (2002) investigates the international negotiations leading up to the Declaration on TRIPS and Public Health, with a focus on the legal effects of the text. Kenneth Shadlen (2004) explores the divisions between developing and developed nations over the rules of global economic governance, demonstrating that developing countries are best served by multilateral rules that minimise their vulnerability to the demands of powerful states. And Susan Sell and Aseem Prakash (2004) employ the TRIPS and public health debate to compare and contrast the relative influence of the pharmaceutical business network and the NGO network in the US, viewing both as competing interest groups.

There are also several accounts of the case written by NGO personnel, most notably Ellen 't Hoen (2002, 2003) and Nathan Ford (2004) both of MSF. These contributions publicise the real-world impacts for developing country citizens of TRIPS implementation problems and appeal for more to be done to solve access to medicines issues in LDCs. Although it is clear that NGOs did not achieve all their goals in relation to TRIPS and public health, contributions from NGO personnel tend to undervalue the significance of the NGO role at the WTO, perhaps due to their unwavering commitment to resolve these issues in full. Instead, this chapter seeks to provide a basis to comprehensively understand and evaluate how the NGOs were able to achieve as much as they did given the constraints and interests of powerful states weighted against them.

In bringing about a review of the TRIPS Agreement, the NGO campaigners took into account political constraints and opportunities, including policy crises, domestic political cycles, the

activities of private actors and particular national interests. The NGOs used these to construct the TRIPS safeguards issue as an urgent policy problem that must be dealt with by the WTO. In undertaking various campaign activities such as hosting international conferences and working through alternative inter-governmental arenas the negotiating resources of LDCs, NGOs were able to demonstrate that their objectives in regards to the TRIPS Agreement were compatible with the interests of the African Group and other developing countries, such as Brazil. These activities provided a basis for NGOs to enhance the negotiating resources of LDCs in order to tackle the issue within the WTO arena.

The first part of this chapter examines the negotiation of the TRIPS Agreement during the Uruguay Round of trade negotiations, which began in 1986 and concluded in 1993. I then explore the ‘for’ and ‘against’ arguments concerning the establishment of international IP rules and technology transfer in the context of pharmaceuticals. Turning to the contention surrounding the TRIPS Agreement following the establishment of the WTO in 1995, I explain how ‘creative ambiguity’ and power-based outcomes in the negotiation stage resulted in the problems and controversies between developed and developing countries that emerged in relation to the interpretation and implementation of the agreement once it had been enacted.

The second part of the chapter focuses on the NGOs’ access to medicines campaign. I detail the key actors involved and outline their campaign activities and strategies. These include mobilising support through hosting international workshops, generating support in both in national and international policy arenas, challenging the behaviour of private actors such as research pharmaceutical MNCs, highlighting the ‘bullying tactics’ of wealthy nations directed against less developed nations, and significantly, informing a key set of developing countries to contest the issue at the WTO. In evaluating the NGO campaign, I trace the key developments on the issue at the WTO from the 2001 TRIPS Council Special Sessions and the Doha Declaration to the decision of members to permanently amend the TRIPS Agreement in 2005.

International cooperation for the protection of IP: a balancing act

Dating back to the Paris Convention of 1883, international cooperation among the advanced industrialised nations for the protection of IP rights has a relatively long history. Following the Paris Convention, which protects industrial property through patents and trademarks, a number of additional international IP accords were enacted. These include the 1886 Berne Convention (rules on copyright); the 1891 Madrid Agreement (trademark rights); the 1893 establishment of the United International Bureaux for the Protection of Intellectual Property (BIRPI); the 1925 Hague Agreement (the registration of industrial designs); the Universal Copyright Convention administered by United Nations Educational, Scientific and Cultural Organisation (UNESCO); and

the Rome Convention (rules for the protection of broadcasters, performers and sound recordings).⁸ In 1967, the World Intellectual Property Organisation (WIPO) was established to administer many of these agreements, which itself became a specialised agency of the UN in 1974. WIPO currently has 183 signatories and a membership, staff and budget greater than that of the WTO (WIPOa).

Despite the number and range of international accords and agreements relating to IP rights in existence prior to the WTO, they did not constitute a coherent international IP regime. For example, some aspects of IP protection were not covered, and governments had a great deal of flexibility in regard to which agreements to uphold (Croome 1995, 131). As a result, the TRIPS Agreement, which came into force with the establishment of the WTO in 1995, signified a new era in the protection and enforcement of IP rights; it not only linked IP with international trade, but backed up the work of WIPO with significant enforcement powers in the form of the WTO's DSB.

The major argument for increasing protection for holders of IP rights internationally is twofold. First, it is claimed that IP rights are no different to more tangible property rights and therefore should be protected. As explained by IP Australia (the Australian Government agency responsible for administering IP rules):

[i]ntellectual property represents the property of your mind or intellect. It can be an invention, trade mark, original design or the practical application of a good idea. In business terms, this means your proprietary knowledge – a key component of success in business today (2008).

Second, a well-structured system for protecting IP rights can promote technological innovation and advancement from which society as a whole may benefit. In enacting IP laws, governments typically confer monopoly production rights to the holder of the IP to enable them to recuperate their investment into developing a new technology. Without some form of IP protection, there may be little incentive to invest in new technology as other producers may 'free ride' by utilising the new technology to more cheaply produce and sell generic versions of a product, thereby capturing the market. While this outcome is seemingly preferable for consumers, in practice, it means that there would be little, if any, inducement to invest in new technology. As such, governments typically enact and administer IP right regimes to promote investment, economic growth, and technological advancement. In doing so, the key issue is maintaining a balance between encouraging investment and the development of technology with the need to promote competition in the market and ensure that important technological advancements are available to citizens. This balancing act is even more difficult to achieve in the international context.

⁸ For more detail about these agreements and conventions, see the WIPO website. URL: <http://www.wipo.int/about-wipo/en/gib.htm#P23_2347>.

The issue of balancing technological advancement with equitable access to technology is perhaps no more clearly illustrated than by the international multi-billion dollar pharmaceuticals industry. The cost of developing new medicines is extremely high. According to the Pharmaceutical Research and Manufacturers of America (PhRMA), discovering and developing a new medicine involves between 12 and 15 years of research, development, testing, patent application and approval, drug production and marketing, all of which costs in excess of \$US 1 billion (2005, 2). Most of this activity is undertaken in industrialised nations with well established IP rights regimes. However, increased global economic integration through international trade and foreign investment has exposed the divides between the established systems of IP rights in industrialised nations with the often poorly enforced patent protection legislation in many developing countries. It is important to note that this is not simply a case of poor governance.

Several developing countries have compelled research pharmaceutical companies to offer their medicines for reduced prices, often using the threat of allowing generic production as a bargaining chip. In fact, states such as India and Brazil actively encourage the production of generic versions of patented medicines, viewing the generic medicines industry as an important component of their economies. Consequently, in developing nations, generic versions of patented medicines, either produced locally or in other developing country locations, are available relatively quickly, well inside the 20 year monopoly period, which is the standard in developed nations. While this level of availability enables developing country citizens suffering from life-threatening diseases, such as HIV/AIDS and malaria, to access comparatively cheap medicines, the producers of the medical technology are deprived of revenue to reimburse their substantial investment in producing the medical technology. And, without adequate remuneration for their investments, little incentive is provided for investment in new technology. At the same time, medicines to treat diseases such as HIV/AIDS, tuberculosis and malaria are suffered disproportionately by citizens of developing countries who cannot afford the price of patented drugs. Clearly, an international IP regime that could adequately take these issues into account was always going to be difficult to achieve, especially given the range of interests at stake.

The development of the TRIPS Agreement

The impetus for the inclusion of a trade-related IP accord at the WTO emerged during the Uruguay Round of trade negotiations. Given that US-based MNCs were among the most significant contributors to investments in new technologies, the US was the major advocate of a WTO IP accord (Sell 1998, 2003; Drahos 1995). With profits dependent upon IP protection, these firms convinced the US government that the nation's declining international competitiveness was directly linked to the inadequate protection of IP in developing countries (Sell 2003; Sell and May 2005). As such, they argued, greater international patent protection was necessary to restore flagging US economic growth and trade competitiveness.

In addition to promoting an international IP accord linked to trade, US MNCs additionally lobbied for an amendment to Section 301 of the 1974 US Trade Act. In 1988, this resulted in the creation of the 'Special 301' provision enabling the USTR to unilaterally pressure nations that failed to protect patents for US-held IP (Sell 2003, 119). However, the US was not alone in enacting legislation in an attempt to protect its patent holders internationally. In 1984, the European Community instituted a similar policy entitled the 'New Commercial Policy Instrument', which deemed the failure to uphold as a European firm's patent an 'actionable offence' (van Bael and Bellis 1990, cited in Shadlen 2004, 82). The US Special 301 provisions and the Europe's New Commercial Policy Instrument essentially mandated unilateral punitive action against nations (mostly LDCs) without adequate IP laws.

Though the threat of unilateral pressure from both the US and EU made the constitution of a multilateral IP agreement at the WTO appear more attractive to developing nations, the Uruguay Round negotiations concerning the TRIPS Agreement were exceptionally long and hard-fought. Reminiscent of previous unsuccessful attempts to institute an international IP accord at UNCTAD and WIPO, deep divides between developed and developing countries emerged over the nature of the mandate for establishing an IP accord within the international trade regime. Indeed, the absence of any existing rules within the GATT in relation to IP that might guide how an IP accord could be incorporated into the international trade regime bolstered doubts among developing countries, particularly India and Brazil, that IP was within the competence of GATT (Croome 1995, 132-133).

The major stumbling block in regard to the TRIPS negotiations was the uneven spread of costs and benefits of an IP accord to WTO member states. Given their comparative advantage in the development of new technology, industrialised nations had a great deal to gain from the constitution of an IP accord linked to trade (Croome 1995, 135). Conversely, the piecemeal, loosely enforced system of IP protection in many developing nations, combined with the need for access to new innovations and technology to fuel economic development, meant that most developing nations faced considerable costs in signing up to a WTO accord (Abbott 2002, 470). While developing countries contended that pharmaceuticals and other technologies were necessities for meeting national public health and economic development objectives, European and American negotiators pointed out that they bore the costs involved in developing new technology (Abbott 2002, 470). In the later stages of the negotiations, the issue of the base standard of IP protection required, along with the types of special arrangements that might be provided for developing nations, were key debating points. The developing countries made it clear that they wanted TRIPS to recognise their special needs by containing flexibilities to pursue important national policy objectives (Croome 1995, 253).

In eventually agreeing to a multilateral IP accord linked to international trade under the auspices of the WTO, developing countries were granted three concessions: increased market access,

technology transfer, and the TRIPS safeguards. The market access provisions, which applied to agriculture and textiles, were also part of the deal for developing countries in agreeing to other new issues including trade in services. In regard to technology transfer, developed nations were required to provide incentives for their companies to transfer technology to the least developed countries. Meanwhile, the safeguard provisions were to deal with the negative consequences of patent protection in special circumstances such as 'national emergencies'.

In 1995, in spite of the disagreements between developed and developing countries, the TRIPS Agreement came into force with the establishment of the WTO. The agreement outlines the minimum standard of protection for IP in regard to copyright and related rights, trademarks, service marks, geographical indications, industrial designs and patents for all types of goods (including pharmaceuticals) to be upheld by all member states. However, enforcement and dispute settlement through the WTO's DSB is the most significant part of the TRIPS Agreement. The penalties for violating TRIPS commitments are considered a strong deterrent to non-compliance, with the DSB able to order the disposal or destruction of pirated or counterfeit goods (WTOh).

In terms of timeframes, developed nations were given one year to become TRIPS compliant (by 1996), developing nations were allowed until 2000, whilst the least developed nations were granted an eleven year period (until 2006) to ratify TRIPS. Least-developed countries were also granted the possibility of an extension while transition economies could also benefit from the same delay as developing nations if they met certain additional conditions (see WTOi). Further, developing countries were given ten years to introduce patent protection if they did not already provide it in a particular area of technology (WTOj). However, for pharmaceuticals and agricultural chemical products, developing nations would have to accept applications for patents from the start of the transition period, even though a patent would not actually have to be granted until the end of the transition period (WTOj).

Regardless of the transition periods for developing countries and the other concessions granted, discord over TRIPS did not disappear. This was because many of the market access and technology transfer provisions for developing countries were not forthcoming and the exact interpretation of the appropriate use of the safeguard measures became subject to 'creative ambiguity'. In regard to market access for agriculture, a number of commentators, including Finger (2001) and Hathaway and Ingco (1996) have pointed out that developing nations stand to lose as much from TRIPS as they will gain in market access agreements on manufactures. Moreover, developing countries found that they were under increasing pressure from Europe and the US to comply with TRIPS before their agreed deadlines (Croome 1995, 283; Sell and Prakash 2004, 160). This unilateral pressure, uncertainty surrounding the appropriate use of the TRIPS safeguard measures, combined with emerging health crises in developing countries led to a pervasive conflict between developed and developing countries over the utilisation of the safeguard measures to provide affordable access to essential medicines in developing nations.

The TRIPS safeguards: creative ambiguity

Despite the inclusion of flexibilities in the TRIPS Agreement to deal with the negative consequences of patent protection, there was considerable uncertainty amongst developing nations about exactly how and under what circumstances to invoke these safeguards. This was a particular issue in instances where pharmaceutical patents stood in the way of maintaining public health objectives, such as providing affording access to essential medicines. The relevant articles of the TRIPS Agreement, Article 30 *Exceptions to the Rights Conferred* and Article 31 *Other Use Without Authorisation of the Right Holder*, did not adequately clarify the circumstances under which the TRIPS safeguard provisions could be utilised. For example, Article 30 simply states:

[m]embers may provide limited exceptions to the exclusive rights conferred by a patent, provided that such exceptions do not unreasonably conflict with a normal exploitation of the patent and do not unreasonably prejudice the legitimate interests of the patent owner, taking account of the legitimate interests of third parties (WTOg).

The uncertainty for developing countries in activating the TRIPS flexibilities for public health reasons lies in the statement that the exceptions to providing a patent must not ‘unreasonably’ interfere with a patent, the interpretation of which is unspecified. Meanwhile, Article 31 essentially outlines the conditions under which governments may issue what are known as ‘compulsory licences’ to allow the production of generic versions of patented products. Issuing a compulsory license involves a government forcing a patent holder to allow either the government or others to use the IP. The TRIPS Agreement states that in doing so, governments must normally have attempted to seek permission from the patent holder first. However, it also stipulates that:

[t]his requirement may be waived by a Member in the case of a national emergency or other circumstances of extreme urgency or in cases of public non-commercial use [...] the right holder shall, nevertheless, be notified as soon as reasonably practicable (WTOg).

Importantly, Article 31 states that compulsory licensing must be “predominantly for the supply of the domestic market of the Member authorising such use” and that appropriate remuneration be provided to the patent holder (WTOg). Additionally, Article 2.1 of TRIPS incorporates Article 5.4 of the Paris Convention, which also allows for compulsory licensing if there is “a failure to work a patent” (WIPOb). Despite this, Article 31(i) significantly casts doubt over the legal security of a nation in utilising the compulsory licensing as a safeguard measure is, as it explains that “the legal validity of any decision relating to the authorisation of such use shall be subject to judicial review or other independent review by a distinct higher authority in that Member” (WTOg).

For developing countries, the passage of the TRIPS Agreement into international trade law and the uncertainty about how to interpret Articles 30 and 31 cast a significant level of doubt over the

legality of their normal practices in relation to pharmaceutical products. These ‘normal practices’ included regularly issuing compulsory licenses (also known as ‘other use without the authorisation of the patent holder’) to authorise the production of generic versions of patented medicines, and parallel importing (taking advantage of different prices in different countries for a patented product by importing the cheaper good without the patent holder’s permission). These policies had been important bargaining tools for ensuring relatively stable and affordable access to medicines by inducing pharmaceutical companies to lower medicine prices in developing nations. As Shadlen explains, the “post-Uruguay Round problem for developing countries was not just that many of the expected substantive concessions were not forthcoming, but that the stability and predictability to be produced by a multilateral agreement [TRIPS] did not materialize either” (2004, 84). Developing countries, notably South Africa, India, Thailand, Brazil and others that attempted to employ the TRIPS safeguard provisions for public health purposes (especially by issuing compulsory licenses) have faced legal sanctions and diplomatic pressure from industrialised WTO members, particularly the US and the EU, as well as legal action from research pharmaceutical MNCs that own patents.

Following the establishment of the TRIPS Agreement in 1995, the USTR continued to apply unilateral pressure upon developing countries to accelerate their implementation of TRIPS, and in many cases, to institute levels of IP protection *greater* than that required by TRIPS. These ‘TRIPS-plus’ measures included limiting the circumstances in which compulsory licences on pharmaceutical products may be issued, extending patent terms beyond the 20 years required by TRIPS, and prohibiting the export of medicines produced under compulsory licence. TRIPS-plus standards have been included in bilateral trade agreements, including the 1977 Bangui Agreement, which is the IP agreement for former French colonies in Africa, updated in 1999 to ensure TRIPS compatibility (‘t Hoen 2003, 57). US pressure has also led to the constitution of patent regimes that go beyond TRIPS requirements in Nigeria, Uganda and Cambodia, and in the Free Trade Agreement of the Americas (FTAA), which covers 34 nations (Ford 2004, 143).

On top of attempts to encourage IP protection greater than that required by TRIPS, the USTR pressured developing countries to become TRIPS compliant prior to their designated transition periods. The USTR produced an annual Special 301 Report on IP rights placing offending nations on either the Special 301 ‘Watch List’ or the ‘Priority Watch List’. In 1996, one year after the establishment of the WTO, the USTR created the Office of Monitoring and Enforcement (OME) to oversee trade agreement implementation and compliance with the WTO agreements, as well as other regional and bilateral trade agreements. OME findings have been the basis upon which the US has pursued legal action against nations failing to uphold IP rights or attempting to utilising the ambiguous TRIPS safeguards (Shadlen 2004, 91-92). Further, the US business lobby exerted influence over US trade policy decisions with requests that the USTR sanction governments that employ the TRIPS safeguards as well as initiating their own legal action against developing countries (Sell and Prakash 2004, 146). Where the USTR deemed a nation to be in violation of

TRIPS, the US presented its case at the WTO. In 1996, for example, the US initiated separate proceedings at the WTO in this regard against Pakistan, Portugal and India, whilst the EU initiated proceedings against India in 1997. In 1998, the US successfully pressured Thailand to amend its pharmaceutical patent law. Thailand removed its provisions for granting compulsory licenses and parallel importing and abolished its Pharmaceutical Patent Review Board, a body set up to control the price of medicines (CPTech 2000a). In doing so, the US used its power at the IMF and World Bank, with developing nations placed on the Special 301 watch lists at risk of having requests for funds from these institutions rejected (Shadlen 2004, 91). At the height of the Asian economic crisis, Thailand was beholden to US pressure as the nation desperately required the financial assistance of the IMF.

Together, US and EU unilateral pressure on developing countries and the emerging difficulties with the WTO's TRIPS Agreement, particularly the uncertainty over the TRIPS safeguards, led to an entrenched debate involving developing countries, NGOs, MNCs and industrialised nations. I now turn to the role of the NGO campaign in this debate, as the activities of NGOs were crucial in not only publicising the TRIPS and public health issue, but helping to generate momentum towards it being addressed at the WTO. As I will argue below, NGOs also played a significant role in empowering developing nations to contest the issue in the WTO arena, which ultimately resulted in the decision to permanently amend the TRIPS Agreement.

TRIPS and the access to medicines campaign

The access to medicines NGO campaign arose from the perception of an emerging crisis in maintaining access to affordable essential medicines in developing countries to treat diseases such as HIV/AIDS, malaria and tuberculosis. This was viewed as a particular problem in Africa, where it is estimated that NGOs provide 40 percent of health services (UNAIDS 2000). Though access to medicines in the developing world is dependent upon a range of factors, including adequate production levels, supply management, correct storage, and appropriate use, the NGO network contended that a major cause of declining access from the mid-1990s was a reduction in affordability brought about by the constitution of TRIPS. Specifically, the implementation of TRIPS in developing countries was pinpointed as the cause of reduced local manufacturing capacity, minimal technology transfer and lack of encouragement for research and development in developing nations (Ford 2004, 139). NGOs also pointed to the ambiguity surrounding the use of the TRIPS safeguard measures in terms of the national emergency provisions and the pressure on developing nations from the US and EU to enact IP protection in shorter timeframes and at levels exceeding those specified by TRIPS. These issues were brought into sharp focus by the legal action brought against South Africa by a group of research pharmaceutical MNCs (supported by the US and EU), which served as a major catalyst for the development of the NGO campaign.

During 1998, South Africa faced increasing pressure from a number of quarters to repeal its 1997 Medicines and Related Substances Control Amendment Act, which allowed for generic substitution of off-patent medicines, transparent pricing, and parallel importation of patented medicines. In February 1998, the South African Pharmaceutical Manufacturers Association (SAMPA) and 40 (later 39 due to a merger) predominantly multinational pharmaceutical corporations brought a suit against the South African government alleging that the Amendment Act violated the South African constitution and South Africa's commitment to the TRIPS Agreement.⁹ Adding to the pressure on South Africa was the successful request of PhRMA to the USTR to place South Africa on the Special 301 Watch List. The US suspended South Africa's GSP benefits and threatened further trade sanctions (Barber 1998). In turn, the European Commission pressured South Africa to retract the Amendment Act on behalf of European research pharmaceutical companies. In a March 1998 letter to Thabo Mbeki (then Vice-President of South Africa), Sir Leon Brittan (then Vice-President of the European Commission) stated that "Section 15c of the law in question would appear to be at variance with South Africa's obligations under the TRIPS and its implementation would negatively affect the interest of the European pharmaceutical industry" (see CPTech 2000b).

The legal action and unilateral pressure on South Africa from the US and Europe thus provided a strong impetus for an NGO campaign that sought to clarify the TRIPS safeguards in a manner that would allow developing countries greater flexibility in making essential medicines more affordable. The campaign strategy revolved around publicising the negative impact of the IP rights/international trade linkage on public health, the 'bullying' tactics of the wealthy industrialised nations and MNCs, and lobbying at policy-relevant inter-governmental institutions. The NGOs also sought to highlight the link between the HIV/AIDS epidemic and TRIPS implementation in relation to access to patented anti-retroviral medication in developing nations (Sell and Prakash 2004). As such, the campaign activated a broad range of NGOs, from public health advocates and development NGOs to HIV/AIDS activists, not to mention those organisations focused on the social impacts of international trade liberalisation more generally.

Key actors

Though the campaign did not get underway officially until 1999, its origins can be found in an October 1996 workshop organised by HAI, an informal network of more than 200 consumer, health, development and other public interest groups concerned with IP and pharmaceutical access issues (HAIa). The HAI workshop, held in Bielefeld, Germany, brought together health and IP experts, academics, and activists to discuss the potential impact of the new WTO accords, especially TRIPS, on the affordability of medicines and national public health policies (Tellez).

⁹ Pharmaceutical Manufacturers' Association of South Africa v President of the Republic of South Africa. Case No 4183/98, filed Feb 18, 1998.

The workshop paved the way for a host of influential international NGOs to lend their resources and support to the campaign. Among the most prominent international NGOs involved was MSF with its 'Campaign for Access to Essential Medicines' that began in 1999 (Ford 2004, 138). Prior to this campaign, MSF had devoted most of its resources to service delivery, supplying medicines and providing medical care in developing countries rather than international trade issues. However, the nature of its work led to its involvement in campaigning on IP and access to medicines issues. As noted in one campaign document, "we grew more familiar with pharmaceutical patents, the TRIPS Agreement and the WTO in the process – not because we wanted to, but because we had to" (Boulet, Garrison and 't Hoen 2004, 3).

The well-known international NGO, Oxfam International, joined the campaign network in October 2000, launching its 'Cut the Cost Campaign' in February 2001 (Oxfam 2001). With the launch of the organisation's 'Make Trade Fair' campaign directed at the WTO, the 'Cut the Cost Campaign' was renamed the 'Patents and Access to Medicines Campaign'. Similarly, another prominent international NGO, QUNO, ran a program entitled 'Trade, Intellectual Property and Development'. In the US, among the most active NGO contributors to the campaign were Consumer Project on Technology (CPTech) created by consumer advocate and former US presidential candidate, Ralph Nader (the organisation is now known as Knowledge Ecology International), the Health Gap Coalition, and AIDS Drugs for Africa. The major European NGOs involved in campaign included the Berne Declaration, Intellectual Property Watch (both of Switzerland), the Wemos Foundation (the Netherlands), Misereor (Germany), Voluntary Service Overseas (VSO) and CAFOD (both based in the UK).

A number of NGOs involved in awareness campaigns for the recognition of the rights of people living with HIV/AIDS also contributed in the campaign, undertaking both lobbying and grassroots activism. These included several organisations that are part of the transatlantic ACT UP network, notably ACT UP Paris, ACT UP Philadelphia, and ACT UP New York. In the developing world, several NGOs working on HIV/AIDS issues were also involved, including the Thai NGO Coalition on AIDS (TNCA) consisting of a network of over 160 Thai NGOs working on prevention, treatment and care of HIV/AIDS sufferers. In Brazil, where the government has been relatively successful in providing medicines to HIV/AIDS sufferers and had stood firm in the face of US pressure for TRIPS-plus measures, a number of NGOs lent their support, such as the Brazilian Network for Peoples' Integration (REBRIP) and the Brazilian Interdisciplinary AIDS Association (ABIA). In South Africa, the Treatment Action Campaign (TAC) was established in 1998 with the objective of campaigning for the prevention and equitable access to medicines and treatment for people with HIV/AIDS (TAC). TAC also formed an important alliance with COSATU (the federation of South African Trade Unions) known as the Alternative Alliance (Lethbridge 2004). Given their focus on access to care and medicines, HIV/AIDS organisations formed an important part of the campaign network.

A great many more NGOs from developing countries were also part of the access to medicines campaign. In India, NGOs and national generic pharmaceutical firms have long worked together to lobby the government to resist changes to India's patent system. India is the world's leading supplier of generic medicines: 67 percent of the total produced is exported to other developing nations (Barton 2004; Oxfam, Make Trade Fair). The Affordable Treatment and Action Campaign (AMTC), among the most prominent of the Indian organisations involved in the access to medicines campaign, was launched in 2001 by a broad group of public health NGOs to create both national and international awareness of the public health and access to medicines problems in India. Focus on the Global South, an NGO whose trade campaign activities include lobbying WTO members in Geneva, producing research on various trade issues, forging links with national social movements in Asia, and organising public demonstrations (Focus on the Global South (a)), was also been an important organisation in the campaign network (Focus on the Global South (b)).

Together, these international and national NGOs, trade unions, and HIV/AIDS activists constitute the most prominent organisations contributing to the access to medicines campaign targeting the WTO's TRIPS Agreement (see Table 5.1 below). Though this case study does not delve into the internal relationship dynamics between the NGOs involved in the campaign, it should be noted that there was a high level of collaboration amongst activists and consumer groups involved in the issue (Ford 2004, 139). Specifically, developing country NGOs, as well as those international NGOs providing services in developing countries, acted as information providers within the campaign network, thereby fortifying the legitimacy of the claims being made about access difficulties and the effects on developing country citizens (see Keck and Sikkink 1998 on the boomerang model).

Table 5.1 Major international and national NGOs involved in the access to medicines campaign

Location	NGO
International	Health Action International (HAI)
	Health Global Access Project (Health GAP)
	Médecins Sans Frontières (MSF)
	Oxfam International
	Quaker United Nations Office (QUNO)
	Third World Network (TWN)
North America	ACT UP Philadelphia
	AIDS Drugs for Africa
	Center of Concern
	Consumer Project on Technology (CPTech) (now known as Knowledge Ecology International)
	Essential Action

	Health GAP Coalition Institute for Agriculture and Trade Policy (IATP) Public Citizen Treatment Action Group (TAG)
Europe	ACT UP Paris Berne Declaration (Switzerland) Catholic Agency For Overseas Development (CAFOD) Dutch HIV Association (The Netherlands) European Public Health Alliance (EPHA) European Generic medicines Association (EGA) Evert Vermeer Foundation (The Netherlands) Intellectual Property Watch (Switzerland) Misereor (Germany) Netherlands Institute for Southern Africa (NIZA) Voluntary Service Overseas (United Kingdom) Wemos Foundation (The Netherlands)
Africa	Congress of South African Trade Unions (COSATU) Kenya Coalition for Access to Essential Medicines (Kenya) Treatment Action Campaign (TAC) (South Africa)
India	Affordable Treatment and Action Campaign (AMTC) Centre for Trade and Development Drug Action Forum Federation of Medical Representatives Association of India (FMRAI) Jana Swasthaya Abhiyan (JSA) Lawyers' Collective HIV/AIDS Unit National Working Group on Patent Laws (NWGPL) Public Health Movement Research Foundation for Science, Technology and Nature Resource Policy (led by Vandana Shiva)
Thailand	Aids Access Coalition Alliance of Democratic Trade Union, Alternative Agriculture Network Coordinating Committee for Primary Health Care of Thai NGOs Focus on the Global South, Thai Network of People Living with HIV/AIDS Thai NGO Coalition on Aids
South America	Brazilian Interdisciplinary AIDS Association (ABIA) Brazilian Network for Peoples Integration (REBRIP) Centro Debate de Accion y Ambiental (Colombia) Latin American Institute for Legal Service Alternative (ILSA)

The NGOs undertook a range of campaign activities in their attempt to improve access to essential patented medicines in developing countries. They mobilised support at NGO-organised international workshops and conferences; publicised the issue at relevant international policy arenas other than the WTO; sought to expose the pressure tactics of the US and Europe; and worked alongside other private actors such as generic pharmaceutical firms and technology developers. Further, NGOs informed the negotiating positions of developing country WTO members affected by the TRIPS safeguards controversy. In doing so, they aimed to have the TRIPS safeguards clarified in a manner that would provide for greater technology transfer and allow developing countries to continue their use of compulsory licensing and parallel importing to provide affordable access to essential medicines. I now examine these strategies in detail and the progress on the issue at the WTO from the establishment of the campaign in 1999 through to the eventual amendment of the TRIPS Agreement in December 2005.

Generating support: NGO workshops and conferences

Though the issue of access to medicines and IP had been on the radar of public health and development NGOs since the establishment of the WTO, it was not until 1999 that a dedicated campaign on the matter was launched. In March 1999, MSF, CPTech and HAI together sponsored the first series of international NGO meetings to discuss the viability of compulsory licensing as a policy tool for increasing access to essential medicines in developing nations. Justifying the intensified involvement of NGOs, Bas van der Heide of HAI argued that “the issue of compulsory licensing is too important to leave to patent officers and trade officials” (CPTech 1999a). As the workshop invitation explained:

[...] although specifically allowed in international agreements on intellectual property, compulsory licensing of patents is a topic of some controversy. The purpose of this meeting is to begin a dialogue among stakeholders on several important factual, legal and ethical questions that will provide a context for policy making (CPTech 1999b).

Held in Geneva at the Palais des Nations, the high-profile March 1999 meetings involved approximately 60 public health and consumer NGOs from around the world, government representatives from both developed and developing countries, representatives of pharmaceutical companies, and international organisations including the WTO and WHO (CPTech 1999a; Williams 1999). According to news reports of the event, the US government representative came under sustained pressure at the meetings to stop pressuring developing nations over their lack of patent protection for pharmaceuticals (Richwine 1999). Essentially, this first series of meetings provided an arena in which the key issues surrounding access to medicines and IP were established. The meetings also helped create a broad campaign platform upon which a core group of NGOs agreed upon and were willing to commit their resources to (Tellez).

On 25-26 November 1999, immediately prior to the WTO Ministerial Conference in Seattle, 350 NGO representatives from fifty countries met in Amsterdam for a conference jointly organised by MSF, CPTech and HAI. Entitled ‘Increasing Access to Essential Drugs in a Globalised Economy: Working Towards Solutions’, the meeting produced the ‘Amsterdam Statement’. One of the core tenets of this joint NGO statement was the proposal for the establishment of a ‘TRIPS and Public Health’ working group within the WTO (’t Hoen 2003, 46). Such a working group, it was argued, could address the ambiguity surrounding the use of TRIPS safeguards including the circumstances under which compulsory licensing and parallel importing may be used to increase access to medicines in developing countries.

As ’t Hoen explains, the ‘Amsterdam Statement’ was significant in that it essentially “served as a guide for the work of NGOs and other advocates on TRIPS and public health” (2003, 46-47). It also helped mobilise a great many international and national NGOs who subsequently added their weight to the campaign network including Oxfam International, the Health Gap Coalition, ACT UP Paris and TAC in South Africa (Interview, MSF Representative, 2006). Together, the March and November 1999 NGO-sponsored meetings helped to spearhead the international campaign on TRIPS and public health by generating consensus around the idea that the ambiguity surrounding the TRIPS safeguards was in large part responsible for the declining access to medicines in developing nations.

Working through alternative international policy arenas

Just prior to the NGO-sponsored meetings outlined above, NGOs, like MSF, had begun to play important roles in getting the issues of affordable access to medicines, TRIPS implementation and the HIV/AIDS crisis on the agenda at policy-relevant international organisations, particularly the WHO. At the 1998 meeting of the WHO’s World Health Assembly (WHA), NGOs participated in updating the WHO’s drug strategy, attempting to focus attention on the effect of IP rules on access to essential medicines in developing nations. One of the important outcomes was that the WHA adopted the Revised Drug Strategy (Resolution WHA52.19), which called upon WHO member states to review their options in regard to maintaining equitable access to medicines in the face of international trade agreements (WHO 1998). The Resolution also requested that the WHO “report on the impact of the work of the World Trade Organization (WTO) with respect to national drug policies and essential drugs and make recommendations for collaboration between WTO and WHO, as appropriate” (WHO 1998).

In addition to pinpointing the role of international trade rules in hampering access to medicines, the WHA Resolution resulted in the WHO publishing a guide containing recommendations for member states about how to implement TRIPS in a manner that maintains the equitable availability of essential medicines (WHO 2001). Not surprisingly, the US and EU strongly resisted the role played by the WHO in advising and assisting developing country members in regard to

TRIPS and they unsuccessfully attempted to pressure the WHO to cancel the publication of the guide (Abbott 2002, 475; 't Hoen 2003, 48). Overall, the WHO's involvement in international trade issues has been contentious. According to Frederick Abbott (2002, 475), the WTO Secretariat has been less than cooperative with the WHO in regard to TRIPS matters and WHO representatives were not granted observer status at the WTO's TRIPS Council until July 2000 (WTOk).

For the May 1999 meeting of the WHA, both the NGOs and the US were prepared to contest the WHO's involvement in the TRIPS issue, with the US sending its trade officials (Sell 2003, 149). Immediately prior to the meeting, HAI and CPTech hosted a workshop for NGOs and member states to brief NGO-friendly negotiators on some of the key controversies surrounding the TRIPS and access to medicines issue (Sell 2003, 149). At the WHA meeting itself, the South African representative, Dr Olive Shisana (Director-General of the South African Department of Health) used information provided to her by the NGOs to present extensive evidence of the US government granting compulsory licenses for pharmaceutical products as well as in the areas of biotechnology, aviation, and nuclear power (Sell 2003, 149). She thereby exposed the hypocrisy of the US in pressuring developing countries over their use of compulsory licenses for pharmaceuticals. The USTR, caught off guard by South Africa's presentation, was unable to respond effectively (Sell 2003, 149). Thus, the NGO workshop, at which important information was provided to developing country representatives, worked to boost the claims of developing countries in this arena, thereby undermining the legitimacy of the hardline stance taken by the US in regard to TRIPS implementation.

In addition to the WHO, other international institutions and fora were also useful for the NGOs in progressing the TRIPS and public health debate. Like the WHO, UNCTAD researched the impact of the implementation of TRIPS and provided advice to developing country members. Similarly, the UN Commission for Human Rights (UNCHR) investigated the impact of TRIPS implementation on human rights. In August 2000, the UN Sub-Commission for the Protection and Promotion of Human Rights adopted Resolution 2000/7 entitled 'Intellectual Property Rights and Human Rights', which noted that the implementation of TRIPS has the potential to impact the right to enjoy the benefits of scientific progress and its applications; the right to health; the right to food; and the right of self-determination (UN Sub-Commission on the Promotion and Protection of Human Rights 2000).

From 25 to 27 June 2001, the UN General Assembly Special Session (UNGASS) on HIV/AIDS, the first ever to address a health issue, was held in New York City. This meeting was partly a result of the UN Secretary-General's call for action on the issue of HIV/AIDS:

The Secretary-General noted, based on his recent meeting with leaders of six of the world's largest pharmaceutical companies, that they are now ready to sell life-saving

drugs to developing countries at greatly reduced prices. Some 95% of the world's 36 million HIV-infected people live in developing countries, and fewer than 25,000 people in sub-Saharan Africa currently have access to anti-retroviral therapy (UNGASS 2001).

This conference received a substantial amount of publicity and again devoted attention to the role of IP rights in obstructing access to medicines in developing countries. The UN declaration from UNGASS emphasised both prevention and treatment of HIV/AIDS, and there was a call to generate \$9 billion for a global AIDS and health fund (subsequently established in January 2002).

Though motivated by its own budgetary reasons, the support of the World Bank nonetheless strengthened NGO claims about the issue. The World Bank provides funds for the supply of essential medicines to developing nations, spending approximately \$US800 million dollars on pharmaceuticals annually (Vick 1999). As such, the World Bank, despite its neoliberal agenda, supported the use of policy measures such as compulsory licensing and parallel importing of pharmaceuticals in developing countries as the purchase of generics would significantly reduce the Bank's costs (Vick 1999). Combined, the contributions of the WHO, UNCTAD, UNCHR, UNGASS and the World Bank to the debate helped perpetuate the link between the HIV/AIDS crisis, access to medicines and the TRIPS agreement and thus increased the pressure on the WTO to address the TRIPS safeguards issue.

In addition to these multilateral institutions, the European Commission served as a strategically important regional theatre for the NGOs to gain traction on the issue, especially given the EU's support for the MNC legal action in South Africa. Indeed, Europe-based and international NGOs worked intensively to convince the European Commission to modify its opposition to the use of the TRIPS safeguards by developing country governments. In 2000, having become aware of the European Trade Commissioner's 1998 letter to then South African Vice-President Thabo Mbeki, which rebuked South Africa over its Amendment Act, NGOs pointed out that this hardline position defied the common European practice of utilising parallel importing for accessing less expensive pharmaceuticals (HAIb). In early 2001, Dutch NGOs, led by the Wemos Foundation and the Netherlands Institute for Southern Africa (NIZA), lobbied the European Commission to formally withdraw the 1998 letter and support the South African government's Amendment Act (HAI b). These organisations also sent their own letter of support to the South African President Thabo Mbeki (CPTech 2000c).

In response to the ongoing international debate about TRIPS and public health within Europe, the European Commission set up an Issue Group on access to medicines as part of the European Commission's broader 'Civil Society Dialogue' (European Commission 2001a; Smith and Smythe 2003, 205). The Issue Group met on several occasions during 2000 and 2001 to discuss Europe's position on the TRIPS Agreement and public health. Several organisations participated including representatives of the research pharmaceutical industry, the generic pharmaceutical industry and

NGOs such as MSF, Oxfam International, HAI, ACT UP, and the Wemos Foundation (European Commission 2001c). The NGO network lobbied the European Commission to promote support for policy measures such as tiered pricing; increased local production through compulsory licensing; and technology transfer to increase access to medicines in developing countries (European Commission 2001c). In addition to their participation in the Issue Group meetings, the NGOs issued a number of formal statements to the European Commission seeking to have Articles 31 and 39 of TRIPS clarified and lobbied EU Commissioners Pascal Lamy and Poul Nielson to have the EU support the creation of a working group on access to medicines in the WTO (CPTech 2000c). Further, they requested that the European Commission support a formal clarification of the TRIPS safeguards within the WTO arena (CPTech 2000c).

One outcome of the Issue Group meetings was their contribution to the European Commission's 'Programme for Action: Accelerated Action on HIV/AIDS, Malaria and Tuberculosis in the Context of Poverty Reduction' endorsed by the Council of Ministers on 14 May 2001 (European Commission 2001a). The objective of the program was to increase the affordability of medicines for diseases prominent in developing nations including HIV/AIDS, malaria, and tuberculosis:

The European Community will seek to increase the affordability of key pharmaceuticals through attention to issues related to taxes and tariffs in developing countries. The European Community will work towards the introduction of tiered pricing as the norm for the poorest developing countries, while seeking to prevent re-importation to the EU market. Investment will build capacity within developing countries on health and trade-related issues, including implementation of the TRIPs Agreement (European Commission 2001a).

Combined with several European Parliament resolutions supporting public health approach to TRIPS implementation in developing nations, the 'Programme for Action', paved the way for the European Commission to agree that compulsory licensing was indeed one of the safeguards provided for within TRIPS and that Europe should not demand TRIPS-plus measures (European Parliament 2001; 't Hoen 2003, 49). Moreover, individual European governments also played an important role by promoting discussion within international arenas, including the WTO, the July 2000 Group of 8 (G-8) meeting in Okinawa and the EU-US summit, to generate consensus about relaxing the position towards developing nations on the use of TRIPS safeguards. Several European governments and the European Parliament even requested that the pharmaceutical companies withdraw the case against the South African government's Amendment Act ('t Hoen 2003, 44).

Overall, the establishment of the European Commission's Access to Medicines Issue Group and the Programme of Action were important developments for the NGO campaigners. The Issue Group provided an arena for the NGOs to generate publicity and persuade the European

Commission to support the resolution of the issue at the WTO. Though the EU ultimately stated that it was acting as an honest broker during the Doha negotiations (thereby not taking a clear-cut stance on the issue) this marked a significant turnaround from the 1998 position when the European Directorate General for Trade of the European Commission stated that “no priority should be given to health over intellectual property considerations” (European Commission 1998; 't Hoen 2003, 49).¹⁰

Shaming tactics: 'big pharma', Al Gore, and the US Presidential elections

On top of mobilising consensus about the nature of the TRIPS and public health issue in various international and European policy arenas, the NGO campaigners held public demonstrations to highlight the TRIPS implementation problems for developing nations. In both developed and developing country locations, the NGOs engaged the media by staging public demonstrations and holding press conferences. As part of a month long protest action against US research pharmaceutical companies, ACT UP Philadelphia held a demonstration at PhRMA headquarters in Washington DC on 12 March 2001 to protest the lawsuit against South Africa's Medicines Act and the stalling of the trial (Health GAP 2001a). The demonstration involved hundreds of activists with giant puppet effigies of 'big pharma'. Other publicity stunts included a 'die-in' and the decoration of PhRMA headquarters with tombstones representing South African people who had died from HIV/AIDS whilst the implementation of the South African amendment had been delayed (Health GAP 2001a).

CPTech also attempted to pressure pharmaceutical MNCs by seeking information about the true cost of manufacturing HIV/AIDS medicines in order to highlight the extent of their profits. They consulted developing country governments and generics manufacturers including the Thai Government Pharmaceutical Organisation, the US generics industry advocate William Haddad, and Dr Yusuf Hamied, chairman of the generic pharmaceutical company Cipla. Cipla subsequently offered to sell HIV/AIDS medicines to MSF for as little as \$US350 per yearly dose, as opposed to \$US10,000 that research pharmaceutical companies charged, for countries facing the HIV/AIDS crisis (MSF and Cipla 2001). In response, the research pharmaceutical industry attempted a counterattack, publishing a study illustrating that upholding patents is vital for the development of new medicines (see Attaran and Gillespie-White 2001). However, this study failed to gain traction with the broader public.

In early 2001, the NGO network also successfully mobilised students and staff of Yale University in the US, which holds the patent for d4T, an important HIV/AIDS medicine. Yale University had licensed the pharmaceutical company Bristol-Myers Squibb to produce the medicine for which it derived \$US40 million a year in licensing fees (McNeil 2001). MSF requested that Yale

¹⁰ This comment was in response to the WHA resolution on the Revised Drug Strategy.

University allow South Africa to import generic versions of d4T, but the university initially refused, claiming that Bristol-Myers Squibb had an exclusive license. However, a group of Yale University law students organised campus demonstrations and other protest activities with the support of Yale University Professor William Prusoff, one of the medicine's developers. The publicity generated ultimately resulted in Bristol-Myers Squibb announcing that it would reduce the price to 1.5 percent of the cost to an American patient (McNeil 2001). By engaging the producers of the original medical technology, as well as generics industry figures, NGOs aimed to discredit the research pharmaceutical companies' claims about production costs for medicines and therefore the need for high levels of IP protection to ensure investment into new medical technology.

In the lead-up to the US Presidential elections in 2000, a number of US affiliates of the organisation ACT UP, along with HIV/AIDS awareness campaigners, targeted presidential candidate and US Vice President Al Gore in an attempt to publicise the US government's role in pressuring South Africa over its Amendment Act. Al Gore was targeted due to his close personal ties to individuals within the research pharmaceutical industry, receipt of campaign funds from this industry, and his pivotal role in threatening the South African government with trade sanctions.¹¹ In highlighting the US role in the South African court case, the activists staged publicity stunts at the announcement of Gore's bid for the presidency and his subsequent campaign rallies with banners that said, among other things, "Gore's greed kills" ('t Hoen 2003, 44). NGOs also attempted to reinvoke anti-apartheid sentiment, arguing that only affluent South Africans (predominantly white citizens) could afford the cost of patented pharmaceuticals (ACT UP Philadelphia 1999). This in turn attracted negative attention from the US Congressional Black Caucus, a key pillar of support for President Clinton and Vice President Gore. Meanwhile, Ralph Nader, founder of CP Tech and presidential candidate in the US elections for the Green Party of the United States, contributed to the debate claiming that both Republicans and Democrats had 'sold out' to big business (Sell and Prakash 2004, 149).

The confrontation of Gore at election campaign rallies and the additional publicity generated by Nader supporters is said to have had an impact on the US government's eventual decision to reform its practices in regards to IP protection in developing countries (Morrison 2001, 199-200; Thomas 2002, 257). Clinton's desire to see Gore become the next US president and his close ties to the Black Congressional Caucus provided NGO campaigners with a great deal of leverage, and as a result, the Clinton Administration changed its view. In June 1999, the US withdrew its objections to the new South African law, removing South Africa from the USTR's Special 301 watch list. In November 1999, at the WTO's ministerial conference in Seattle, US President Bill Clinton in his speech referred specifically to South Africa and the HIV/AIDS crisis, stating that:

¹¹ On Vice President Al Gore's links to the industry, see ACT UP New York 1999.

the United States will henceforward implement its health care and trade policies in a manner that ensures that people in the poorest countries won't have to go without medicine they so desperately need (Clinton 1999).

The US government also agreed to exercise restraint in the use of the Special 301 provision in cases where vital pharmaceuticals are involved. Further, Clinton introduced institutional collaboration between the USTR and the US Department of Health and Human Services on trade cases involving public health issues (Sell and Prakash 2004, 166). In May 2000, this change of course in US policy was reflected in Clinton's issue of an Executive Order entitled 'Access to HIV/AIDS Pharmaceuticals and Medical Technologies', which supported the use of compulsory licensing to increase access to HIV/AIDS medicines in sub-Saharan Africa (Clinton 2000).

However, in June 2000, only one month after Clinton's Executive Order, the US lodged a 'request for consultation' with the WTO over Article 68 of Brazil's IP law, which allows for compulsory licensing (WTO 2000m).¹² The US argued that Brazilian laws reduced patent owners rights as specified in the TRIPS Agreement under Article 27.1 and Article 28.1. In response, Brazil claimed that Article 68 was consistent with the objectives of the TRIPS safeguard provisions. But in January 2001, under the new Republican administration led by President George W. Bush, the US went on to request the establishment of a dispute panel at the WTO (WTO 2001m).

The issue of Brazil's protection of IP rights had long been a source of tension between the US and Brazil. Several MNCs had been in dispute with Brazil over its patent laws since the early 1980s, and on several occasions the USTR had threatened or applied unilateral trade sanctions against this nation. Additionally, Brazil had been active in a number of international forums advocating that developing countries ensure that they protect their rights in regard to accessing medicines. In April 2001, Brazil presented a resolution to the UNCHR linking the HIV/AIDS crisis to the TRIPS Agreement in an attempt to repel challenges by the US and EU to patent regimes in developing countries. The UN Sub-Commission on the Promotion and Protection of Human Rights subsequently adopted Resolution 2001/33 'Access to Medicines in the Context of Pandemics such as HIV/AIDS', which condemned the US over its application of unilateral pressure on developing countries in regards to TRIPS implementation (UN Sub-Commission on the Promotion and Protection of Human Rights 2001). Further, Brazil controversially offered support in the form of cooperation agreements comprising technology transfer provisions, to other developing countries

¹² The Brazilian Patent Law. Industrial Property Law No 9,279 of May 14, 1996, requires patent owners to manufacture their products in Brazil. If this requirement is not met, a patent is subject to compulsory licensing after three years. An exception is made if the patent owner can demonstrate that it is not economically viable to produce in Brazil or that the requirement is, in some particular way, unreasonable. If the patent owner is permitted to utilise its patent by importation instead of production within Brazil, parallel importation by others is also permitted.

seeking to increase their manufacturing capacity for generic HIV/AIDS medicines ('t Hoen 2003, 45).

Meanwhile, the legal action taken by the research pharmaceutical MNCs against South Africa continued to be fought in the courts, even though the MNCs had effectively lost the support of the US government and the European Commission had distanced itself from the case ('t Hoen 2003, 44). By March 2001, during the course of the hearing, it was discovered that the most contentious section of the Amendment Act had been developed not by the South African government, but derived from a draft legal text constructed by the WIPO Committee of Experts ('t Hoen 2003, 44). This made it exceedingly difficult for the pharmaceutical companies to continue to claim that the amendment was counter to South Africa's international legal commitments ('t Hoen 2003, 44). Meanwhile, NGOs stepped up the pressure on the MNCs. During March 2001, COSATU and TAC staged protests outside the Pretoria High Court against the pharmaceutical companies, which were attended by thousands of people from trade unions, churches, NGOs and people living with HIV/AIDS (TACb). These demonstrations were staged at a critical point in the legal proceedings, culminating in the MNCs withdrawing their case unconditionally in April 2001.

Following the success in South Africa, the NGO campaigners turned their attention to pressuring the US government over its action against Brazil in the WTO. Concerned that this dispute would have a detrimental effect on Brazil's successful HIV/AIDS program, which serves as a model to other developing countries ('t Hoen 2003, 45), the NGOs held a number of demonstrations to support Brazil. In April 2001, NGOs held protests in Washington DC outside the offices of US trade officials. This was supplemented by a press conference jointly held by affiliates of ACT UP and officials from the Brazilian Consulate, at which they defended Brazil's use of compulsory licensing and highlighted the pressure tactics of the US government (Health GAP 2001b). Additionally, MSF and TAC began importing HIV/AIDS medicines from Brazil into South Africa and, in doing so, infringed patents held by MNCs in South Africa. However, following the negative publicity generated by the South African court case, the industry was effectively hamstrung and thus unable to take any action. In May 2001, the work of the NGOs began to show some payoff with US President Bush making the founding pledge of \$US200 million for a disease fund, which later became the Global Fund to Fight AIDS, Tuberculosis, and Malaria. Then, in June 2001, on the first day of the UNGASS on HIV/AIDS, the US issued a joint statement with Brazil announcing that it was officially withdrawing the WTO case against Brazil (Bermudez and Oliveira 2004).

Only three months prior to the Doha Conference, the 9/11 terrorist attacks led to a softening of the US position on compulsory licensing for pharmaceuticals. Specifically, the US government recognised that it may need to issue compulsory licenses of its own for national emergencies resulting from bio-terror threats such as anthrax (Abbott 2001, 486-487; Sell and Prakash 2004, 196). Indeed, in mid-October 2001, in response to the terrorist threat, Canada, having stated its

opposition to the use of TRIPS safeguards by developing nations, overrode Bayer's patent by granting a compulsory licence to a generics manufacturer for the antibiotic Ciprofloxacin, considered the most effective treatment for anthrax (Harmon and Pear 2001). Similarly, the US government announced that it had demanded Bayer reduce the price for Ciprofloxacin by threatening to issue a compulsory license (Carroll and Winslow 2001). These events allowed NGOs to further press the hypocrisy of the US stance on TRIPS. As Abbott explains, this news served to highlight the fact that "no responsible government with a choice would place the public health of its citizens below the interests of a few patent holders" (Abbott 2001, 488).

Toward Doha: NGOs, developing countries and the WTO

During 2001, in the lead-up to the Doha Ministerial Conference, NGOs worked alongside developing countries in order to clarify the proper use of the TRIPS safeguards at the WTO. Having worked solidly on the issue for over two years, the NGOs had demonstrated that their objectives in relation to TRIPS and public health were compatible with those of many developing country governments. The NGOs not only provided moral support to the developing countries contesting the issue at the WTO, but influenced their negotiating strategy for clarifying the rights of developing countries in regards to the TRIPS Agreement.

In April 2001, the WTO and WHO met in Norway for their first ever joint workshop, which provided an important opportunity for NGOs to contribute to the WTO debate. In their joint statement 'Differential Pricing and Financing of Essential Drugs' endorsed by over 100 NGOs, CPTEch, HAI, MSF, Oxfam International and Treatment Action Group (TAG) proposed that the WTO's TRIPS Council adopt a seven-point strategy, including a moratorium on dispute settlement action; an agreement not to put pressure on developing countries to forgo their right to TRIPS safeguards; and an extended deadline for TRIPS implementation in LDCs (CPTEch, HAI, MSF, Oxfam International and TAG 2001). In particular, they emphasised the need for policy instruments such as compulsory licensing and parallel importing to encourage generic competition in order to lower medicine prices. The statement argued that "[d]iscussions on schemes such as "differential pricing" or a global fund for AIDS should not distract from, or be a substitute for, the need for action on patents and the TRIPS Agreement" (CPTEch *et al.* 2001).

Also in April, on behalf of a coalition of more than fifty developing nations led by the African Group (comprising 33 countries), Zimbabwe, which held the chair of the TRIPS Council, proposed a TRIPS Council special session on access to medicines. In doing so, Zimbabwe stated that the WTO could not remain silent on this issue, which was being widely debated outside the WTO ('t Hoen 2003, 49). In preparation for the TRIPS Council Special Session in June 2001, NGOs worked closely with governments of the African Group, Brazil, India and others to arrive at a common position. The lead paper submitted at the first TRIPS Council Special Session entitled 'TRIPS and Public Health', heavily drew upon the concerns raised by NGOs at other international

institutions including the WHA, UN General Assembly and the UN Commission on Human Rights (Abbott 2002, 482). It was supported by the African Group, Barbados, Bolivia, Brazil, Dominican Republic, Ecuador, Honduras, India, Indonesia, Jamaica, Pakistan, Philippines, Peru, Sri Lanka, Thailand, and Venezuela.

In addition to their contribution to the lead paper, NGOs provided the least developed countries with much needed financial and legal support in their shared endeavour to clarify the TRIPS Agreement safeguards (see Tuerk 2003, 190 and 201). The QUNO website put it like this:

[r]epresentatives from developing countries have much at stake in international agreements, yet they are often ill-equipped for the negotiations which lead to these agreements. QUNO provides vital expertise and support, helping delegations to consolidate positions and back their arguments with research and analysis (Quakers in Britain).

In providing this assistance, the NGOs helped inform the developing countries' negotiating strategy for the TRIPS special sessions. Significantly, their assistance helped transfigure the issue from one of policy (balancing technological innovation with equal access to medicines) to procedure (legally clarifying the 'terms of use' of the TRIPS safeguards) (Shadlen 2004, 95).

At the first TRIPS Council Special Session, developing countries sought official confirmation that measures to protect public health would not make them subject to dispute settlement procedures at the WTO. The discussions centred on the requirements of the TRIPS Agreement, in particular how these might be aligned with public health needs in developing countries. As a result of NGO assistance, the developing countries insisted on a ministerial declaration on the use of TRIPS safeguards. With reference to the HIV/AIDS crisis in Africa, Zimbabwe stated that a declaration was required to clarify the issues and in particular, to affirm "that nothing in the TRIPS Agreement should prevent Members from taking measures to protect public health" (WTO 2001b). The session resulted in a degree of consensus among WTO members (including the EU) that TRIPS should not interfere with the protection of public health. Members also requested that the WTO Secretariat prepare a checklist of the articles referred to and schedule a further informal session of the TRIPS Council for 25 July to consider the issues in more detail.

At this July meeting little was achieved and as a result, another two day meeting was planned for late September 2001. At this third meeting, the African Group, with nineteen other countries, presented a draft text for a ministerial declaration on TRIPS and public health, which included provisions for clarifying the use of compulsory licensing, parallel imports and the exportation of generic pharmaceuticals ('t Hoen 2003, 50). NGOs had helped design and draft this text at meetings at Quaker House Geneva (Quakers in Britain). However, the US, together with Australia, Canada, Japan and Switzerland, circulated their own draft, highlighting the importance of

upholding IP rights for promoting research and development into new medicines. In a particularly sanctimonious statement, the USTR argued that developing countries seek “to justify use of protectionist measures by associating these measures [compulsory licensing and parallel importing] with the AIDS crisis when no such linkage exists” (Crossette 2001). Meanwhile, the EU had developed an alternative draft declaration addressing the exportation of medicines produced under compulsory licenses.

Alongside the TRIPS Special Sessions, the NGOs held press conferences and issued public statements of their own to add weight to the claims made by developing countries within the WTO arena. Prior to the opening of the September TRIPS Council meeting for instance, the NGOs held a press conference in Geneva on 17 September 2001 to highlight their concerns about the implications of TRIPS on access to medicines, as well as other issue areas affected by IP rules such as food security and bio-piracy. They also released a joint statement entitled *Re-thinking TRIPS in the WTO – NGOs Demand Review and Reform of TRIPS at Doha Ministerial Conference* (TWN 2001). In November 2001, 32,000 people in 163 countries signed a petition calling on the WTO to change its patent rules (Oxfam International 2001).

Despite opposition from the US and its supporters, the efforts of the NGO network in publicising the issue and the developing countries in presenting a unified position at the TRIPS Council Special Sessions resulted in TRIPS and public health becoming a key agenda item at the November 2001 Doha Ministerial Conference (Interview, WTO Representative 2006). Immediately prior to the conference, an NGO statement issued on 11 November 2001 called on WTO members to endorse an interpretation of the TRIPS Agreement that protects public health:

[w]e support the leadership declared by the 71 countries of the African, Pacific, and Caribbean Countries, that the Ministerial Declaration on the TRIPS Agreement and Public Health must state that “nothing in the TRIPS Agreement shall prevent governments from taking measures to protect public health” (Health GAP 2001c).

The NGO statement again called for the right to issue compulsory licences, parallel importing and an extension for the implementation deadline of TRIPS for developing nations.

The Doha Declaration on TRIPS and Public Health

Discussion of TRIPS and public health dominated the Doha Ministerial Conference. Indeed, on the opening day of the ministerial, Michael Moore, the WTO’s Director-General, stated that the TRIPS and public health issue could be a deal breaker for a new round of trade negotiations (‘t Hoen 2003, 55). After a great deal of debate among members including the African Group, Brazil, India, and the US, members finally issued a declaration that was mostly a result of a compromise between the US and Brazil (Abbott 2002). The Doha Declaration on TRIPS and Public Health

clarified the right of WTO members to utilise the TRIPS safeguards, thereby affirming the sovereign right of governments to take measures to protect public health:

[w]e agree that the TRIPS Agreement does not and should not prevent Members from taking measures to protect public health. Accordingly while reiterating our commitments to the TRIPS Agreement, we affirm that the Agreement can and should be interpreted and implemented in a manner supportive of WTO Members' right to protect public health and, in particular, promote access to medicines for all (WTO 2001c).

Paragraph 5(b) of the Declaration additionally clarifies that "[e]ach Member has the right to grant compulsory licences and the freedom to determine the grounds upon which such licences are granted", while Paragraph 5(c) explains that

[e]ach member has the right to determine what constitutes a national emergency or other circumstances of extreme urgency, it being understood that public health crises, including those relating to HIV/AIDS, tuberculosis, malaria and other epidemics, can represent a national emergency or other circumstances of extreme urgency (WTO 2001c).

As well as clearly stating that members may utilise the TRIPS safeguards for public health reasons, the least developed countries were given an extension of ten years, until 2016, to implement pharmaceutical patent protection (for which the TRIPS Council completed the legal drafting in mid-2002). The Declaration also allows member states to appeal to the Declaration and its negotiating history in the event that a member's legislation, particularly relating to patents for pharmaceuticals, is challenged on the grounds that it is incompatible with TRIPS. As Oxfam International declared, "[t]he final deal reaffirmed that public health is more important than patents. This was an important step forward in making medicines affordable for developing countries" (Oxfam International 2001; see also Banta 2001).

The 'August 30 Solution'

Despite the important advances achieved at Doha, the issue of the production and export of pharmaceuticals, either patented or made under compulsory licenses, to poor countries without the manufacturing capacity was not resolved. Accordingly, the TRIPS Council was assigned to find a solution and report to the General Council on the matter by the end of 2002 (WTO 2001c). In an attempt to meet the 2002 deadline to finalise the issue, WTO member states proposed, debated and rejected a number of different texts. The major point of contention was between developed and developing members over the scope for admitting parallel importation as a TRIPS safeguard ('t Hoen 2003, 58-61).

Throughout 2002, the NGO campaigners contributed to the debate over the text to deal with the parallel importation issue. On 19 December 2002, a coalition of NGOs comprising CPTech, Essential Action, MSF, Oxfam International, Health GAP Coalition, and TWN wrote to WTO members with their own proposal for the legal text. This read:

[u]nder Article 30 of the TRIPS agreement, Members may provide an exception to the exclusive rights conferred by a relevant patent to permit all acts associated with the production for export to a third country of a patented product or a product produced by a patented process; where the export addresses health needs in the third country; and the product and/or process is either (a) not patented; or (b) a compulsory license has been granted or government use made of the relevant patent in the third country (’t Hoen 2003, 59).

WTO member states finally reached a consensus on the export issue in August 2003 immediately prior to the WTO’s Cancún Ministerial Conference. The ‘August 30 Decision’, also known as the ‘Paragraph Six Solution’, provided a temporary waiver for developing nations to allow them to import generic medicines made under compulsory license if they are unable to manufacture the medicines themselves (WTO 2003b). The decision temporarily set aside the obligations of exporting countries under Article 31(f). Provided certain conditions are met, any member country may export generic pharmaceutical products made under compulsory licences to meet the needs of importing countries. The decision includes provisions on transparency (giving a patent owner some opportunity to react by offering a lower price), special packaging and other methods to avoid medicines being diverted to other markets. An annex to the decision outlined the steps that a member state must take in order to declare itself unable to produce pharmaceuticals domestically.

However, the August 30 temporary waiver has been criticised by several NGOs as complex and unwieldy (MSF 2006). As Ford explains: “[t]he concerns of MSF and others is that the deal insists on such a high level of proof and gives such a heavy administrative burden that it is legally and politically unworkable” (2004, 144). However, as other commentators such as Shadlen have noted, the ‘August 30 Solution’ did provide developing countries with a clear set of rules and thus a greater level of predictability and stability in utilising TRIPS safeguards for importing and exporting medicines produced under compulsory licenses (2004, 97). Certainly, it represented a great advance over the uncertain situation prior to the Doha meeting in 2001.

The permanent amendment of the TRIPS Agreement

The WTO’s General Council set a deadline of June 2004 by which to convert the August 30 temporary waiver into a permanent amendment of the TRIPS Agreement. Again however, a lack of consensus among developed and developing countries in regard to how this should be achieved

resulted in the deadline being missed. This time, the disagreements revolved around exactly how to handle the text, in particular, the proportions that should be placed within Article 31 and in an annex to the TRIPS Agreement, as well as how to incorporate the chairperson's statement that had been issued when the General Council adopted the decision. Developing members argued that the waiver had been so difficult to negotiate that it should simply be translated directly into an amendment to avoid further delays.

Eventually, on 6 December 2005, immediately prior to the WTO's Hong Kong Ministerial Conference, WTO members agreed to transform the 2003 temporary waiver into a permanent amendment of the WTO's TRIPS Agreement (WTO 2005c). This decision was to be formally incorporated into the TRIPS Agreement when two thirds of WTO member states had ratified the change for which the initial deadline was 1 December 2007. (However, in October 2007, WTO Members agreed to postpone this deadline until the end of 2009). Further, WTO members agreed to extend the transition period for LDCs to enact protection for trademarks, copyright, patents and other IP to 1 July 2013 (LDCs had already been given until 2016 to protect pharmaceutical patents at Doha). The permanent amendment of the TRIPS Agreement, designed to match the 2003 waiver as closely as possible, completed a process that began with the Doha Declaration on TRIPS and Public Health in November 2001. Significantly, it represents the first ever amendment to a core WTO Agreement.

Conclusion

This chapter demonstrates that the access to medicines campaign played an agenda-setting role in regard to the TRIPS and public health issue, which was eventually debated at the WTO in 2001. In doing so, NGOs utilised a number of key political opportunities, notably the pharmaceutical MNCs' legal action against the South African government; the 2000 US Presidential elections; the HIV/AIDS crisis; and US and EU pressure on developing nations to build their strategy for challenging and clarifying the right of developing nations to employ the TRIPS safeguards. Drawing upon the morbidity rates from AIDS and other disease epidemics in developing nations in order to invoke the public anxiety that HIV/AIDS had created in developed nations since the 1980s, NGOs projected the TRIPS and public health issue as an urgent matter of 'life and death'. As Keck and Sikkink explain, campaigning on bodily harm and life and death issues can be a particularly potent strategy for NGOs, "especially when there is a short and clear causal chain (or story) assigning responsibility" (1998, 17). Indeed, NGOs argued that the legal uncertainty surrounding the use of TRIPS safeguards exploited by 'profit-hungry' pharmaceutical companies, and used as the basis for US and European 'bullying' of developing nations, was the major cause for the decline in access to essential medicines in developing nations. The simplicity of this causal link attracted a large range of organisations, including development, aid, and religious NGOs to lend their support to the campaign.

With a broad consensus among the NGOs on the nature of the problem generated at NGO-sponsored meetings and workshops, the NGOs worked through prominent international organisations, in particular the WHO and European Commission, to garner international support for action in regard to clarifying the TRIPS safeguards. Simultaneously, in the US, the NGO network publicised the coercive tactics used by the Clinton Administration against developing countries in regard to the TRIPS safeguards. In doing so, they targeted Al Gore's presidential campaign, lobbied the US government directly, and held numerous public demonstrations to pressure the US government to allow developing countries to employ the TRIPS safeguards. The staging of public events such as these not only worked to broadcast the urgency of the health crises associated with TRIPS implementation in developing countries, but laid the groundwork for closer relations between the NGOs and developing countries on the issue. As Coulby and Ndrangu note, though their campaign activities, the NGOs demonstrated that "they had a pragmatic approach to TRIPS that reflected a common understanding with the Africa Group" (2001, 7).

Further to the widespread support for the campaign amongst the international NGO community and the attempts to progress the issue at alternative international fora, the most potent strategy employed by the NGO campaigners in affecting the WTO were their attempts to influence the negotiating strategies of developing countries. Exploiting the divisions between developed and developing nations at the WTO, the NGOs played a role in assisting developing nations to arrive at a unified position for negotiating the use of TRIPS safeguards at the WTO. With their financial resources and technical expertise, the NGOs helped African nations to reorient the terms of the debate from one of substance to one with greater currency in the WTO arena: legal procedure and appropriate interpretation of legal text. As Shadlen states, the nature of the WTO as a rules-based institution renders it a prohibitive arena for debating substantive policy issues, while debates about procedural and legal matters are far more amenable to debate at the WTO (2004, 95). NGOs also assisted developing countries with their textual inputs to WTO negotiations. Meanwhile, on the sidelines of WTO conferences, NGOs continued to host meetings and issue joint statements thereby contributing the debate involving the African Group, Brazil, India, the US and Europe at the WTO. Following the release of the Doha Declaration on TRIPS and Public Health, the NGO network further informed the debate in the lead up to the August 30 decision, which member states eventually agreed to make permanent in December 2006.

In sum, the activities of the NGO campaigners were fundamental in leading the debate by mobilising the NGO sector concerned with international trade issues and assisting developing countries with negotiating strategies to bring about these changes at the WTO. The role of NGOs in harnessing political opportunities and utilising a range of strategies to mobilise support to do so is explored in more detail in Chapter 7. While it is important to note that many NGOs were opposed to the policy detail of the 'August 30 Solution' (and thus the 2005 permanent amendment of TRIPS), this does not negate the significance of their role in the WTO policy process dealing with the TRIPS safeguards. Indeed, actors at this level of governance, be they states or non-state

actors, very rarely achieve their goals in full. Perhaps a more pressing concern of NGOs in the area of public health and international trade is the increasing number of bilateral and free trade agreements, especially those between the US and LDCs, that contain IP standards higher than those specified by TRIPS (TRIPS-plus) and thus specifically prohibit the use of compulsory licensing and parallel importing measures. NGOs such as MSF and Essential Action are therefore concerned that the US still wishes to establish TRIPS-plus provisions as the international standard for IP, which may eventually be ratified at the WTO.

Chapter 6

THE NGO CAMPAIGN AGAINST A WTO INVESTMENT AGREEMENT

Introduction

Following the WTO's 2001 Doha Ministerial Conference, international debate over the launch of negotiations on a WTO foreign investment agreement elicited strong opposition from a broad range of NGOs and polarised WTO member states. In late 2002, in preparation for the Cancún Ministerial Conference, an international NGO campaign emerged to publicise the negative aspects of a potential WTO investment framework, especially for developing countries. The arguments put forward by the NGOs significantly informed the anti-investment position of developing WTO members, including the ACP countries, the LDC group and the African Group. Some of these member governments even invited NGO representatives to sit on their official delegations at the 2003 Cancún Ministerial Conference. During the conference, a new coalition of developing countries emerged – the G-90 – that flatly refused to agree to the launch of negotiations on a WTO investment agreement and the other Singapore Issues until progress was made on issues of importance to developing members. This stance was a contributing factor in the collapse of the Cancún ministerial. The following year, in July 2004, WTO members agreed on a package to get the Doha Round back on track, which saw the removal of the investment issue from the agenda altogether.¹³ This outcome is seen as a major victory for developing countries and their NGO supporters.

Like the medicines campaign outlined in Chapter 5, this case study detailing the NGO campaign against a WTO investment agreement seeks to shed light upon relations between NGOs and developing states. It thus provides another point of comparison with the labour standards case in which NGOs aligned with developed WTO members. Also, this case study chapter allows for a further examination of the campaign tactics employed by NGO campaigners in targeting the WTO and how NGOs highlight normative arguments for policy changes at the institution that augment the complementary interests of WTO member states. In working to consolidate opposition to a WTO investment agreement, the NGOs produced research and analysis on the impact of a potential WTO investment agreement, highlighting the potential loss of domestic policy flexibility, especially for developing countries. These resources were disseminated widely amongst civil society, developing country governments and at relevant inter-governmental institutions. Additionally, NGOs hosted a series of international conferences and workshops at which NGOs,

¹³ The 'July Package' was the WTO General Council's decision, agreed to on 1 August 2004. It contains frameworks and other agreements designed to advance the negotiations.

governments, international organisations and academics discussed the costs and benefits of a WTO investment agreement. These NGO activities, which publicised the pitfalls of a WTO investment accord, were crucial for enhancing the negotiating position of developing countries. Indeed, NGOs worked with nations from the African Group, providing them with analytical research and technical assistance to oppose an investment agreement within the WTO arena. Their assistance helped unite and consolidate the negotiating position of what became the G-90 developing nations in opposing the launch of negotiations on an investment agreement at the Cancún meeting.

While a number of accounts detail the breakdown of the WTO negotiations in Cancún (Alpert 2003; CAFOD 2003; Khor 2003b; South Centre 2003; van de Ven 2003; Cho 2004; Hurrell and Narlikar 2006), few scholars have examined the role played by NGOs in this context. For example, Narlikar (2003) and Narlikar and Tussie (2004) explain how developing countries managed to maintain their unity during the Cancún conference when past attempts had proved difficult. Narlikar and Tussie do not examine the contribution of NGOs to this outcome, instead crediting the “structural features” of developing country coalitions for maintaining their unity, such as learning from previous experience (2004). Other authors such as Jurgen Kurtz (2002) provide detailed accounts of the WTO investment negotiations issue since the establishment of the WTO’s Working Group on Trade and Investment (WGTT). Kurtz devotes his attention to the potential role and benefits of multilateral and bilateral investment accords, examining the work to date on rules for foreign investment in the international arena. Instead, this chapter provides an account of the NGO campaign against a WTO investment agreement, assessing the tactics and strategies utilised in order to uncover more about the agenda-setting roles of NGOs in the international trade regime.

This chapter is structured as follows. First, I detail the contention surrounding the development of multilateral rules for foreign investment before briefly investigating attempts to establish such rules in a number of inter-governmental arenas. The development of the issue at the WTO is then examined, beginning with the inaugural Singapore Ministerial Conference in 1996 through to the 2001 Doha Ministerial Declaration, which stated that members would work toward launching an investment agreement following the 2003 Cancún Ministerial Conference. I then turn to the NGO campaign, detailing the actors, alliances, and strategies employed to prevent the launch of negotiations on a WTO investment accord at Cancún. In particular, I focus on how NGOs strategically employed political opportunities to construct a campaign narrative and the ways in which they generated support for their position among the relevant NGO community and developing countries. I then explain the way in which NGOs informed the negotiating position of developing countries in the lead-up to the Cancún ministerial. The final section inspects the events that unfolded at the Cancún ministerial and the subsequent development of the 2004 July Package, which rescued the Doha Round and removed the Singapore Issues from the negotiations.

Multilateral rules for regulating foreign investment: rationale and opposition

Foreign investment is becoming an increasingly significant component of the global economy, having grown at unprecedented rates over the past decade (UNCTAD 2005). For example, in 1998 at the time the issue gained traction in the WTO arena, foreign direct investment (FDI) inflows increased by 39 percent globally despite adverse economic conditions such as the Asian financial crisis and declining commodity prices (UNCTAD 1999). Like international trade, foreign investment has the potential to provide the capital and technology required for the economic development of under-developed and newly industrialising nations, thereby contributing toward economic growth and technology transfer (Jenson 2003, 587). As such, many economists believe that it should be considered equivalent to the international flow of goods and services through trade (Gilpin 2001, 280).

FDI and portfolio investment (PI) are the two main categories of foreign investment. PI refers to investment in holdings of foreign stocks, bonds, corporate stock or other financial assets that are not actively managed in that the investor does not have a controlling interest in the investment (Grabel 1998). PI is also likely to be short term and as a result has the greatest potential to destabilise a recipient economy if it comes to rely upon it. In contrast, FDI often involves foreign ownership through corporate mergers, takeovers or inter-corporate alliances, or completely a new business venture (Gilpin 2001, 278). FDI is primarily driven by MNCs through the creation of foreign affiliates; its purpose is “part of an international corporate strategy to establish a permanent position in another economy” (Gilpin 2001, 278). FDI, which has been growing at twice the rate of international trade (UNCTAD 1999, 2005), is much more significant than PI in terms of its contribution to economic growth and development. It can generate employment, technology advances and improvements in productivity, and thus has great potential to boost the economic growth of developing countries. While both PI and FDI have been under discussion for a multilateral agreement in various inter-governmental arenas, the debate at the WTO has mainly focused on FDI.

The strongest supporters of a multilateral investment agreement have included the EU, the US, Canada, and Japan, as well as peak business associations such as the ICC, the European Union Foreign Trade Association (EFTA), the European Services Forum, and the Union of Industrial and Employers’ Confederations of Europe (UNICE). Advocates of a multilateral foreign investment agreement give two main reasons why such an accord is needed. First, a multilateral agreement would provide an opportunity to restructure the present investment regime: most FDI has remained highly concentrated in industrialised countries while the poorest countries only received 1.6 percent of global FDI flows (UNDP 2007, 6). Second, a new comprehensive investment accord would provide stability, uniformity and predictability for both investors and host states, and would therefore reduce the complexity of the current regime, which consists of a vast number of sectoral, bilateral, and regional foreign investment agreements (Dolzer and Stevens 1995).

In total, there are currently in existence more than 2,300 bilateral investment treaties (BITs), 2,500 double taxation treaties, 200 regional co-operation arrangements and 500 multilateral conventions and instruments for cross-border investment flows (UNCTAD 2005, xix). Some of these treaties are linked to various private and public arbitration systems, allowing investors to take disputes directly to international arbitration. Further, host states utilise a range of different policy instruments to regulate foreign investment, including pre- and post-admission restrictions, as well as various incentives to attract foreign investors (Kurtz 2002, 724). As such, investment agreement proponents advocate the establishment of a comprehensive multilateral investment agreement in order to reduce the complexity in the current investment regime, promote investment flows, and accelerate economic development in LDCs.

In contrast, opponents of a multilateral foreign investment regime, which include a large number of reformist and radical NGOs and larger developing nations such as India, point out that there is no automatic link between investment and economic growth. They contend that a range of factors, including political stability, market access, and appropriate governance and economic management, are important for facilitating economic growth. However, they do concede that the current system, in which BITs dominate and states compete against each other to attract investment by offering tax incentives and other benefits, is also not ideal. Competition for foreign investment, especially among developing countries, is said to result in a 'race to the bottom', whereby states lower their regulatory standards in areas such as labour standards and the environment. But in establishing 'one-size-fits-all' multilateral investment rules, opponents are concerned that national governments may lose control over certain sectors, such as transport and energy, deemed vital for ensuring stable and sustainable economic growth, which would lead to greater volatility and instability in developing and newly industrialising countries (Kurtz 2002, 725). Indeed, national interest concerns such as these saw the adoption of a range of discriminatory policies in most of the now highly industrialised nations. These include limits on foreign ownership; performance requirements for exports and local employment; the requirement of joint ventures with domestic firms; infant industry protection; corporate governance requirements (for example, compelling all members of boards of directors be local citizens); and limiting the voting rights of non-resident foreign shareholders.

Overall, opponents of a multilateral investment agreement are sceptical about the capacity of multilateral investment rules to generate economic growth in poorer nations automatically. They also question the motives of powerful states such as the US and EU in supporting such an agreement, given that these nations are primarily *sources* of foreign investment and developing nations are mostly *recipients*. Investment agreement opponents thus viewed the push for a WTO agreement on foreign investment as an effort to maintain the dominance of rich nations in the global economy to the detriment of LDCs. In sum, while both perspectives on the development of multilateral foreign investment rules concur that the current piecemeal investment regime is far

from perfect, divisions over the capacity of investment rules to contribute to economic development, as well as the motives of wealthy nations in seeking to protect their own MNCs, has been the basis of a protracted international debate dating back to the failure of the ITO in the 1940s.

International cooperation on the rules for foreign investment

The growth of BITS

At international discussions about the design of institutions to govern the global economy after the Second World War, the US argued for the inclusion of foreign investment rules at the proposed ITO. This sparked strong opposition from developing countries, and the US was subsequently forced to weaken the investment provisions (Wilcox 1949). This outcome offended the US business community, which argued that the revised accord favoured host countries (Ostry 2000). These objections ultimately contributed to the failure of the US Senate to ratify the ITO Charter. The GATT, created in place of the ITO, did not include an investment accord. In 1955, the GATT member states, or 'contracting parties', instead adopted a resolution entitled 'International Investment for Economic Development' in 1955, which urged all nations to conclude BITS in order to provide protection and security for foreign investors.

During the 1960s, BITS proliferated and became the major instruments for governing foreign investment. Most BITS comprised strong investment protection and compensation provisions to discourage host state expropriation (Kurtz 2002, 720). To deal with the growth of BITS, two international agencies linked to the World Bank were created. The International Centre for Settlement of Investment Disputes (ICSID) established in 1966, provides facilities for the conciliation and arbitration of disputes between member states and investors who qualify as nationals of other member countries, though participation in this mechanism is voluntary (World Bank). Later, in 1988, the Multilateral Investment Guarantee Agency (MIGA) was created to promote the investment of FDI in developing countries to encourage their economic growth (MIGA). MIGA provides political risk insurance for foreign investments in developing countries; technical assistance to developing nations to improve investment climates and promote investment opportunities; and a dispute mechanism to resolve differences between investors and host states. Through the 1990s and 2000s, limited progress towards a multilateral investment agreement has resulted in the continued proliferation of BITS.

Investment and the GATT

Within GATT, the US continued its quest to establish foreign investment rules linked to trade. During the Tokyo Round of trade negotiations (1973-1979), the US sought to include foreign

investment in the negotiations, but developing countries stood firm in opposition. Similarly, during the Uruguay Round (1986-1993), the US proposed a comprehensive investment agreement, but as before, this was struck down by the developing countries at the initial meeting in Punta del Este, Uruguay. However, a compromise deal in the form of the Trade-Related Investment Measures (TRIMs) Agreement was reached, which imposed performance requirements on an investor *after* entry into a host nation. TRIMs prohibits trade-related investment measures, such as local content requirements, that are inconsistent with the basic provisions of GATT 1994, though this only applies to trade in goods (WTOI). Foreign investment in relation to services was to be dealt with by GATS (currently subject to negotiation as part of the Doha Round). GATS addresses foreign investment in services as one of its four modes of supply of services: that is, the supply of services by a foreign company setting up operations in a host country. With investment measures contained in both TRIMS and GATS, the WTO was only enabled to deal with foreign investment in a piecemeal manner, thus reflecting the nature of the international investment regime more broadly.

NAFTA Chapter 11

Perhaps the most significant advance in terms of international cooperation in the area of foreign investment was the development of NAFTA, comprising the US, Canada and Mexico, which came into force in 1991. Chapter 11 of NAFTA provides a comprehensive set of foreign investment rules pertaining to investment liberalisation and investor protection. For dispute settlement, it utilises the ICSID and the United Nations International Convent on International Trade Law (UNCITRAL). Chapter 11 has proved controversial, with a number of disputes resulting in the award of compensation to MNCs by governments. One prominent case is that of California-based group Metalclad Corporation, which attempted to open a \$US20 million hazardous waste landfill in the central Mexican state of San Luis Potosí (DePalma 2001). Before it could open however, the state governor designated the site an ecological reserve. As a consequence, at a NAFTA tribunal, the Mexican government was ordered to pay Metalclad compensation comprising damages, interest and legal fees close to the sum it had invested in the project, though Mexico appealed. A subsequent tribunal upheld the ruling and approved compensation slightly lower than the original amount. Disputes such as these have attracted the attention of public interest NGOs, especially environmental groups such as CIEL, Council of Canadians, Public Citizen and the IISD, which have feared that NAFTA rules threaten environmental protection. These organisations have remained active in monitoring and publicising the impacts of Chapter 11 (as well as NAFTA in its entirety). Nevertheless, NAFTA supporters had hoped that Chapter 11 would provide a blueprint for the roll-out of an investment agreement encompassing all nation-states. Indeed, NAFTA already employs the MFN and non-discrimination principles that underpin the WTO trade rules.

The failure of the MAI at the OECD

Around the time of NAFTA's establishment in 1991, the US proposed that work on a multilateral investment accord begin at the OECD. Given the absence of developing countries at this institution, the US was far more optimistic about the chances for success at the OECD than at the GATT/WTO (Smythe 2003-04, 63). In May 1995, the results of a feasibility study into a Multilateral Agreement on Investment (MAI) were presented to the OECD Council of Ministers. The OECD subsequently announced its decision to develop the MAI within two years. It was to be a free-standing treaty, open to all OECD members as well as non-OECD (mostly developing) countries by accession. In content, the MAI was similar to NAFTA, with its major objectives being investment liberalisation, harmonised rules for FDI and the establishment of dispute settlement procedures (Kurtz 2002).

During the MAI negotiation period, a number of disagreements emerged, which had the effect of dampening the enthusiasm of MAI proponents. There was considerable discord between the US and the EU over the extra-territoriality of the US Cuban Liberty and Democratic Solidarity Act (the Helms-Burton Act), which had come into force during the MAI negotiation period in March 1996.¹⁴ The EU was concerned that the Helms-Burton Act would discriminate against non-US investors operating in Cuba (see Jackson 1997). In an attempt to resolve this issue, the EU filed a complaint at the WTO, though it was eventually resolved in May 1998 through a mutual understanding. Another point of disagreement revolved around the inclusion of cultural industries in the MAI. Canada and France argued that host nations should retain the right to regulate investment to preserve and promote national identity and cultural and linguistic diversity. The US strongly opposed such a caveat given that its media and entertainment sector constitutes its second largest export industry.

On top of disagreements among OECD member states, an NGO campaign opposing the MAI emerged in early 1997, which proved to be extremely disruptive (Goodman 2002; Deibert 2003). In February 1997, a draft text of the MAI was leaked and Public Citizen, a prominent US NGO, published the draft on its website. By October 1997, a group of 25 NGOs concerned by the content of the leaked draft, and who had previously taken part in MAI discussions at the OECD, announced their withdrawal from the process. These NGOs stated that the OECD was overly focused on the promotion of business interests at the expense of the public interest (Goodman 2002, 217). Their withdrawal strengthened the anti-MAI campaign, with many more NGOs ranging from environmental groups, trade unions, human rights groups, religious organisations and anti-globalisation social movements activists lending their support. In the US, public opposition to

¹⁴ Title III of the Helms-Burton Act allows US citizens and corporations whose property was expropriated by the Cuban government (dating back to 1 January 1959) to sue for damages against anyone who traffics in their former property after 1 November 1996.

the MAI became associated with the investment chapter of NAFTA, which heightened support for the campaign among activists.

In May 1997, the OECD Ministerial Council agreed that the MAI negotiations be carried over to the 1998 meeting. However, by this time, the disagreements among member states; the pressure generated by the NGO campaign; and the Asian financial crisis (which severely affected the 'miracle' economies of Thailand, Korea, Indonesia, Malaysia and the Philippines) had taken their toll on the support and goodwill of OECD members in regard to the MAI negotiations. In regard to the Asian crisis some of the affected nations, including Malaysia and Russia, had imposed conditions on capital outflows in order to stem the financial disaster. This response called the wisdom of the MAI into question, given that it aimed to liberalise all investment flows. This added to the emergent hostile political and economic atmosphere to the development of the MAI at the OECD.

At the April 1998 OECD ministerial meetings, OECD member states affirmed the progress made towards the MAI, but agreed that a further period of assessment was required for the negotiating parties and their societies in preparation for an October 1998 meeting. To address the public anxiety over the MAI generated by the NGO campaign, five OECD member nations (Australia, Canada, France, Great Britain, and the US) implemented some form of parliamentary review of the MAI. The French Government's review, conducted by the Lalumiere Commission, was highly critical of the MAI both in terms of the negotiating procedures and the substantive content, particularly the inclusion of culture industries (Lalumiere 1998). As a result, on 14 October 1998, just prior to the OECD ministerial meeting, France withdrew from the negotiations. Ultimately, the withdrawal of France marked the beginning of the end of the MAI. Less than two months later, the OECD announced that the MAI negotiations were effectively over (OECD).

Efforts to establish multilateral rules for foreign investors at the OECD thus added to the previous unsuccessful attempts to gain international cooperation in this important area of international economic governance. But in spite of this failure, investment agreement proponents returned their attention to the international trade regime and the WTO as a host arena for foreign investment rules.

Foreign investment rules and the WTO

Foreign investment has been under discussion at the WTO since the organisation's first ministerial conference in 1996 in Singapore. At this meeting, the issue of a comprehensive WTO investment agreement was introduced alongside three other issues for the consideration of WTO members: transparency in government procurement, trade and competition policy, and trade facilitation. Along with investment, these issues have become collectively known as the Singapore Issues or 'new issues'. The EU, Japan and Canada were the major proponents of these issues at the WTO.

For EU member states, in particular Britain and France, one of the motives for a WTO foreign investment agreement over an OECD agreement was the representational advantages of European nations at the WTO where EU member states not only represent themselves independently, but have the benefit of regional level representation through the European Commission. This gives EU member states an advantage in negotiating accords that support their national and regional interests. In addition, European states considered that a WTO agreement would have more immediate benefit due to the greater number of member-states at the WTO over the OECD. However, the US was only lukewarm to a WTO investment agreement due to disappointments over the issue during the Uruguay Round and their view that other international arenas were more amenable to a high standard foreign investment agreement.

In the lead-up to the Singapore Ministerial Conference, there was little consensus about the establishment of a comprehensive investment accord at the WTO. At this time, some developing countries (especially India) were strongly opposed to an investment agreement. Others though, like Mexico and Brazil, were initially supportive. In mid-October 1996, the WTO Secretariat released an issues paper entitled 'Trade and Foreign Direct Investment' in order to assist WTO members to evaluate how they might deal with the issue (WTO 1996h). The report examined the costs and benefits of an investment agreement; reviewed the bilateral and regional agreements currently in place; and outlined the key policy issues facing WTO members. At the ministerial, a compromise was eventually reached whereby members agreed on the establishment of the WGTI to further discuss the relationship between trade and foreign investment. It was stipulated, however, that the creation of the WGTI that would "not prejudice whether negotiations will be initiated in the future" (WTO 1996g). Even so, investment proponents viewed this development as a first step in building consensus on the issue with a view to beginning negotiations. In contrast, those opposed saw the WGTI as a way to stall the issue while appearing to have made a compromise.

At the inaugural WGTI meeting in June 1997, members agreed upon the key areas of investigation to set the scope of investment discussions. These were: the current international arrangements for foreign investment; the gaps in the current regional and bilateral arrangements; the ability of multilateral rules to provide benefits over current arrangements; the economic relationship between trade and investment; and the impact of a linkage between trade and investment on development and economic growth. In the same way that external factors had impinged on the MAI negotiations, a number of events impacted the WGTI discussions. NAFTA disputes and the Asian economic crisis heightened concerns at the WGTI about how developing countries could maintain policy flexibility while providing investors with enough stability and predictability. Moreover, the collapse of the MAI negotiations at the OECD led proponents to increasingly view the WTO as the best chance for the establishment of an international investment agreement (Smythe 2003-2004, 63). Yet, after 18 months of WGTI discussions, the only real areas of consensus that emerged from the meetings related to the potential of FDI to boost economic development and the acknowledgement that international trade and foreign investment are closely

linked (Smythe 2003-04, 65). Despite this, in December 1998, the WGTI recommended to the General Council that its work continue through 1999. Those members that favoured the launch of investment negotiations held hope that some progress would be achieved by mid-1999 that could be taken to the WTO's Seattle Ministerial Conference.

Two competing draft paragraphs on the investment issue for the Seattle Ministerial Declaration emerged in the lead-up to the conference. One, endorsed by the developing countries, simply called for further study on the investment issue, while the draft put forward by investment proponents led by the EU called for the launch of detailed investment negotiations as part of the 'Millennium Round' of trade negotiations (WTO 1999f). At the Seattle ministerial, disagreement over the issue deepened. India was the most vocal opponent, while the US also opposed the issue, stating that EU was using it as a diversionary tactic to avoid committing to concessions in other areas. Although a leaked draft text states that study into the investment issue would continue with a view to further negotiations, the meeting dramatically collapsed for a host of reasons outlined elsewhere in this thesis (see Chapter 4).

Over the course of 2000 and 2001, the WGTI met on five occasions, though little progress was achieved. Despite this, the issue was placed on the agenda for debate at the Doha Ministerial Conference in December 2001 where it emerged as one of the major controversies. At the conference, the EU and Japan continued to push for the commencement of negotiations on investment (WTO 2001d). The G-77 of developing nations did not staunchly oppose the launch of negotiations on investment as expected, instead focusing on eliminating agricultural subsidies, reforming anti-dumping and countervailing duties, textile negotiations, and the reform of TRIPS (G-77 2001). Within the G-77 though, there was vocal opposition from India, Malaysia and Pakistan, which maintained their stance that further study on the matter was required before negotiations could possibly begin. In total, 22 developing countries stated their opposition to the inclusion of the Singapore Issues in their statements while three developing countries supported it, including Mexico, South Korea and Venezuela (Bailey, Green, Hardstaff, Hilary, and Melamed 2003, 7). As at Seattle, the US did not join the investment *demanduers* for a range of reasons including the OECD failure; domestic disputes within US government agencies over bilateral agreements with Singapore and Chile; their preoccupation with the FTAA; and the fact that PI was not included in the proposal for a WTO investment agreement (Kurtz 2002, 774).

Despite the high level of disagreement over investment at Doha, a reference to the start of investment negotiations appeared in the final ministerial declaration. The Doha Declaration states that negotiations on investment (FDI only) along with the other Singapore Issues (competition policy, government procurement, and trade facilitation) will begin following the Fifth Ministerial Conference in 2003:

Recognizing the case for a multilateral framework to secure transparent, stable and predictable conditions for long-term cross-border investment, particularly FDI, that will contribute to the expansion of trade, and the need for enhanced technical assistance and capacity-building in this area as referred to in paragraph 21, we agree that negotiations will take place after the Fifth Session of the Ministerial Conference on the basis of a decision to be taken, by explicit consensus, at that session on modalities of negotiations (WTO 2001a).

The larger developing countries (and a range of NGOs) were incensed that a reference to investment had found its way into the Doha Declaration and that their opinions had been ignored. NGO critics alleged that the delegations of several developing nations were pressured to accept the reference to investment and the other Singapore Issues “...through a combination of stick and carrot methods of “persuasion” ” (Tandon 2003, 13). Indeed, Tandon explains that LDCs were offered technical assistance while the ACP countries were granted a waiver on the issue of the Cotonou Agreement, which led to a split among developing nations on the investment issue (2003, 13).¹⁵

In response to the reference to investment in the Doha Declaration, India and a dozen other countries raised the issue with the Qatari Chairperson, requesting that the text be changed to reflect that consensus was required for investment negotiations to begin. A compromise was reached whereby the Declaration would remain but that the chairperson would clarify the position of India and the other members in a formal statement. The chairperson’s statement read:

I would like to note that some delegations have requested clarification concerning Paragraphs 20, 23, 26 and 27 of the draft declaration. Let me say that with respect to the reference to an ‘explicit consensus’ being needed, in these paragraphs, for a decision to be taken at the Fifth Session of the Ministerial Conference, my understanding is that, at that session, decision would indeed need to be taken by explicit consensus, before negotiations on trade and investment and trade and competition policy, transparency in government procurement, and trade facilitation could proceed.

In my view, this would also give each member the right to take a position on modalities that would prevent negotiations from proceeding after the Fifth Session of the Ministerial Conference until that member is prepared to join in an explicit consensus (WTO 2001e).

¹⁵ The Cotonou Agreement is a treaty between the EU and the ACP countries that aims to reduce poverty, contribute to sustainable development and integrate ACP countries into the world economy. It replaced the Lomé Convention, which had been the basis for ACP-EU development cooperation since 1975.

No objections or reservations from members on this clarification were raised.

The WGTI continued to meet during 2002 and 2003, though with a new chairperson, a new checklist of issues to address, and the Cancún Ministerial Conference set for September 2003 as the deadline. During this time, the ambiguity surrounding whether negotiations would automatically begin, despite the Qatari chairperson's statement, entrenched the divide between the developed and developing members over the issue.

The contestation surrounding the Doha mandate, as well as broader concerns about the impact of a WTO investment agreement for developing countries, led to the emergence of an international NGO campaign that opposed further negotiations on issue within the WTO. The campaigners played an important role in harnessing political opportunities to publicise the disadvantages of a WTO investment agreement and mobilise support among NGOs concerned with trade issues as well as less developed WTO members. Their actions helped bolster the position of the African Group of nations, the LDC Group and the ACP countries in strongly opposing the issue at the 2003 Cancún Ministerial Conference.

The NGO campaign against a WTO investment agreement

Sparked by the controversy surrounding the Doha Declaration's reference to the beginning of investment negotiations and the efforts of pro-investment members at the WGTI, an NGO campaign against the development of a WTO foreign investment agreement got underway in late-2002 in preparation for the September 2003 Cancún Ministerial Conference. The NGOs involved were outraged that pro-investment member states had been able to keep investment and the other Singapore Issues on the negotiating table and that a new deadline had been set to deal with the issue in the face of strong opposition from developing nations. The NGOs also highlighted the limited progress achieved on the key issues of importance to developing countries such as market access; agricultural barriers; the TRIPS flexibilities; and special and differential treatment. Thus, NGOs opposed a WTO investment accord because they saw it as antithetical to the development character of the Doha Round and were concerned about the effects of such an agreement on domestic policy flexibility and MNC power in the global economy. Their ultimate goal in waging this campaign was to have investment (and the other Singapore Issues) removed from the Doha Development Agenda: "[w]e call on all governments in the discussions ahead to reject the start of negotiations and to remove these issues from the WTO" (TWN 2002).

Key actors

The anti-investment campaign targeting the WTO comprised a broad range of NGOs such as religious organisations, development NGOs, environmental groups, economic justice groups, trade unions, research institutes, and agricultural unions (see Table 6.1, which lists the major international and national NGOs from around the globe that supported the campaign). However, the leading NGOs were Oxfam International, TWN, CIEL, IISD, FOEI, Public Services International (PSI), WWF, and IAPT. These groups were centrally involved in the organisation of international workshops and conferences as well as the development of NGO sign-on statements and other campaign documents.

Table 6.1: Major international and national NGOs involved in the campaign against a WTO investment agreement

Location	NGO
International	ActionAid
	Greenpeace International
	International Centre for Trade and Sustainable Development (ICTSD)
	International Gender and Trade Network (IGTN)
	International Institute for Sustainable Development (IISD)
	Oxfam International
	Public Services International (PSI)
	Third World Network (TWN)
	World Wide Fund for Nature (WWF)
	World Forum of Fish Harvesters and Fishworkers
Europe	Berne Declaration
	Catholic Agency for Overseas Development (CAFOD)
	Corporate Europe Observatory
	Friends of the Earth, England, Wales and Northern Ireland
	Friends of the Earth, Europe
	Heinrich Böll Foundation
	Our World is Not For Sale (OWINFS)
	Seattle to Brussels - Taking Action Against Corporate Globalisation (S2B Network)
	World Economy, Ecology and Development (WEED)
	World Development Movement (WDM)
North America	Alliance for Democracy
	American Lands Alliance
	California Coalition for Fair Trade and Human Rights

	<p>Center for International Environmental Law (CIEL)</p> <p>Center of Concern</p> <p>Church World Service</p> <p>Citizens' Network on Essential Services</p> <p>Citizens' Trade Campaign</p> <p>Global Exchange</p> <p>Institute for Agriculture and Trade Policy (IAPT)</p> <p>National Environmental Trust</p> <p>Public Citizen's Global Trade Watch</p> <p>Sierra Club</p> <p>Union of Needletrade, Industrial and Textile Employees (UNITE)</p> <p>United Auto Workers</p> <p>United Steelworkers of America</p>
Asia and Oceania	<p>Australian Fair Trade and Investment Network (AFTINET)</p> <p>Equations</p> <p>Focus on the Global South</p> <p>Global Trade Watch (GTW)</p> <p>Research Foundation for Science, Technology and Ecology</p> <p>Society for Conflict Analysis and Resolution</p> <p>Transform India Group</p>
Central and South America	<p>Brazilian Institute for Consumer Defense (IDEC)</p> <p>Brazilian Network for Peoples' Integration (REBRIP)</p> <p>Caribbean Reference Group on External Relations</p> <p>Centre for Consumer Defence of El Salvador</p> <p>Centro para la Denfensa del Consumia, El Salvador</p> <p>Instituto del Tercer Mundo (ITeM)</p> <p>Social Watch, Uruguay</p> <p>Solon Foundation, Bolivia</p> <p>Third World Institute</p>
Africa	<p>Africa Trade Network</p> <p>Congress of South African Trade Unions (COSATU)</p> <p>EcoNews Africa, Kenya</p> <p>Institute of Economic Affairs</p> <p>Kenya National Farmers Union</p> <p>Social Development Network (SodNet)</p> <p>Southern and Eastern African Trade, Information and Negotiations Institute (SEATINI)</p> <p>Trade Law Centre for Southern Africa (TRALAC)</p>

As the number of national NGOs involved in the campaign attests, there was a great deal of regional and national level campaigning against a WTO investment agreement. In the UK in July 2003, WDM launched its 'Cut the Corporate Out of Cancún', which opposed negotiations on all of the Singapore Issues on the basis that they were contrary to the wishes of EU citizens and developing countries (WDM 2003). At the regional level, European NGOs together targeted European governments and the European Commission – the chief proponent of a WTO foreign investment agreement. In Africa, NGOs like the Southern and Eastern African Trade Information and Negotiations Institute (SEATINI) worked with African governments to build unity and mobilise opposition to a WTO investment agreement. Leading environmental NGOs, for example WWF and IISD, advocated that environmental conditions should be imposed on foreign investors. The anti-investment campaign was also boosted by the related NGO campaign aimed at 'derailing' the Cancún Ministerial Conference entitled 'No Deal is Better than a Bad Deal'. Together, these national, regional and international NGOs sought to publicise the hazards of a potential WTO investment agreement and boost the capacity of developing nations to oppose the issue at Cancún.

Building support: NGO workshops and information dissemination

NGO campaigning on the investment issue got underway in late-2002 and intensified during 2003. The leading NGOs organised a number of conferences and workshops to discuss the investment issue and establish a campaign platform. In mid-September 2002, a group of 40 European NGOs launched their campaign against investment issuing a declaration entitled *Joint Statement by European Civil Society Groups Against an Agreement on Investment in the WTO* (S2B Network 2002). It called on the European Commission to drop its proposal to begin investment negotiations at the WTO, requesting instead that the lack of enforceable rules governing the behaviour of MNCs be addressed, not at the WTO, but within the UN. In late September 2002, European NGOs finalised their campaign plans for the Cancún ministerial at a strategy meeting in Copenhagen, Denmark (FOE Europe 2002).

During 2003, NGOs undertook a range of activities to publicise the negative ramifications of a potential WTO investment agreement and initiate support for the campaign among civil society. At the January 2003 WSF in Porto Alegre, Brazil, CIEL organised a workshop on trade and foreign investment. With presentations from representatives of CIEL, Oxfam International, and the American Lands Alliance, the workshop examined the evolution of the legal framework for FDI; current trends in bilateral and multilateral investment regimes; and the challenges involved in the move towards sustainable investment (CIEL 2003a). In March 2003, TWN, Oxfam International, WWF, PSI, CIEL and IATP, jointly organised a high-profile conference in Geneva, specifically timed to inform the 14-15 April 2003 WGTI meeting. It included an international NGO workshop and a public seminar to which representatives of WTO members and international organisations were invited, as well as academics and other trade experts (CIEL 2003b). The NGO workshop component, 'Briefing and Update on WTO Negotiations on Investment and New Issues', dealt

with possible future WTO rules on investment and the other Singapore Issues. More than 50 NGOs and social movements voiced their concerns about a WTO investment agreement in terms of its impact on development, gender rights, environmental sustainability, and labour rights. The workshop consolidated the position of the NGOs on the issue and allowed the opportunity to develop a common NGO position to present at the public seminar that followed (Interview, Oxfam International Representative 2006).

The March 20 public seminar, 'The Nature and Implications of a WTO Investment Agreement', brought together the key WTO members engaged in the debate in an attempt to influence the discussions at the WTO. It included presentations from the WTO ambassadors of India, Kenya and Uganda, diplomats representing the EU and the US, and academics and experts on foreign investment issues. At the meeting, the EU representative claimed that its proposal for a WTO investment agreement was "very modest" and would not limit domestic policy space or prevent governments from regulating investments (TWN 2003a). Taking a different approach, the US representative reiterated the preference of the US for high standard bilateral investment arrangements and pointed out that too much national flexibility in an investment agreement can result in investors attempting to buy influence with a government.

Citing the uncertainty surrounding the relationship between trade and investment and the weak capacity of most developing countries to negotiate the issues, the presentations of the developing country ambassadors all argued against beginning negotiations at the WTO. The Kenyan Ambassador stated that the sheer enormity of the Doha work program meant that the resources of LDCs were already strained, while the Indian Ambassador argued that it was uncertain whether a WTO investment agreement would increase investment in a manner that would be beneficial for developing countries (Permanent Mission of India, Geneva 2003). In his presentation, the director of UNCTAD's Division on Globalisation and Development Strategies, Dr Yilmaz Akyuz, supported developing countries by pointing out that developed nations had employed a number of policies to restrict foreign investment in the past and that 'one-size-fits-all' investment rules at the WTO were inappropriate given the different levels of development of WTO members.

During the meetings, the NGOs also supported the developing countries opposed to a WTO investment agreement by pointing to its potential negative effect upon sustainable development and policy flexibility at the national level, while iterating the ongoing difficulties faced by developing countries in implementing existing WTO agreements. They argued that a WTO investment agreement "will tilt the balance against the host country governments just as the TRIPS agreement had done in favour of holders of IPRs [intellectual property rights]" (Raja 2003). NGOs also expressed doubts about the adequacy of WTO negotiating procedures, and the enforcement of an investment accord through the WTO's DSB. At the conclusion of the meetings, NGOs called upon WTO member governments to drop the launch of negotiations on investment and the other Singapore Issues in their joint declaration entitled *No Investment Negotiations at the WTO*:

Declaration of Non Governmental Groups and Civil Society Movements (CIEL 2003c). Signed by more than 50 NGOs, this statement was released at the media conference held following the March 21 public seminar and was sent to all WTO members.

In the months following the March meetings, a number of NGO-organised events were held in Europe and North America. In April 2003, the German NGO, Forum on Environment and Development, organised a conference at which NGOs discussed investment and the other Singapore Issues with government representatives including the European Commission's Director-General for Trade, Carlo Pettinato, and German government representatives (Bach 2003). The meeting resulted in NGOs agreeing that foreign investment should be regulated outside the WTO framework in order to harness FDI for economic development. In May 2003, CIEL, with FOE, Oxfam America, National Wildlife Federation, Heinrich Böll Foundation and the Global Development and Environment Institute of Tufts University, organised a conference entitled 'Investment, Sustainable Development and the WTO: Allies or Antagonists?' (CIEL 2003d). Held at the Carnegie Endowment for International Peace in Washington DC, a variety of speakers presented a range of views on developing an investment agreement at the WTO. The NGOs also used the WTO's 2003 Public Forum, 'Challenges Ahead on the Road to Cancún', as an opportunity to question the benefits of a WTO investment agreement. CIEL, TWN, IATP, WWF, PSI, Oxfam, International Gender and Trade Network (IGTN) hosted a session at the forum entitled 'Investment in the WTO? Myths and Realities' (WTO 2003a).

To coincide with the final WGTI meeting before Cancún, on 10 June 2003, a group of four NGOs held a media conference in Geneva to voice their concerns about proposals to begin investment negotiations at the WTO (Raja 2003). At the event, ActionAid released its new report *Unlimited Companies*, while three other NGOs, the International Union of Foodworkers, CIEL and TWN explained their opposition to a WTO investment agreement (ActionAid). In July, at a meeting in Italy of European trade ministers at which Europe's position for the WTO's Cancún ministerial was discussed, over 70 European NGOs demanded that the European Commission drop its push to begin WTO negotiations on the Singapore Issues (WDM 2003). A joint NGO statement developed by WDM, Greenpeace, and FOE was presented to the ministers urging them to put citizens and communities before the rights of MNCs (WDM 2003). Meanwhile, in the US, despite the Bush Administration's preference for BITS over an investment agreement at the WTO, an NGO sign-on letter was sent to USTR Robert Zoellick and the United States Congressional Oversight Group on Trade Policy. The August 2003 letter, entitled 'Oppose the Initiation of Investment Negotiations Within the World Trade Organization', was signed by 32 mostly US-based NGOs (CIEL 2003e).

In addition to hosting workshops and conferences and producing declarations and sign-on statements, NGOs published and disseminated a number of research papers and articles challenging the efficacy of a WTO foreign investment agreement. These included Oxfam's policy paper *The Emperor's New Clothes: Why Rich Countries Want a WTO Investment Agreement*,

published in April 2003, FOEI's August 2003 position paper, *No New Rights for Big Business at the WTO*, and the UK Trade Network's *Unwanted, Unproductive and Unbalanced: Six Arguments Against an Investment Agreement at the WTO*, produced in May 2003. Additionally, Chang and Green's 2003 paper, *The WTO and Foreign Investment: Don't Do As We Did, Do As We Say* also proved a significant resource for NGO campaigners in articulating their concerns about a WTO investment accord, as did the special April edition of the SEATINI Bulletin devoted to the investment issue. Also, FOE England, Wales and Northern Ireland and WDM produced the report *Investment and the WTO: Busting the Myths* to counter the EU's arguments for supporting a WTO investment agreement (FOE England, Wales and Northern Ireland and WDM 2003; Lobe 2003).

Further, NGOs monitored and reported developments on the issue at the WTO, which were important for LDC members and the NGO community. The IISD provided foundation funding for an electronic newsletter devoted to development and foreign investment issues at all levels of governance (Smythe 2003-2004, 74). This was supplemented by regular newsletters and papers such as ICSTD's weekly newsletter, *Bridges*, which is not only a resource for other NGOs, but according to Smythe, is consulted by the WTO member negotiators (2003-2004, 73-74). TWN, Focus on the Global South, and IATP also provide information services on WTO trade negotiations as well as conduct research and analysis on trade issues on a regular basis. For example, TWN publishes the South-North Development Monitor (SUNS), which provides information and analyses on the formal and informal negotiation processes at the WTO and other international arenas for the benefit of LDC negotiators and NGOs (South-North Development Monitor). These materials are consulted regularly by not only NGOs, but developing country negotiators (Interview, WTO Representative 2006; Smythe 2003-2004, 74).

To supplement their claims about the risks of a WTO investment agreement, NGOs successfully sought and utilised the support of prominent international institutions. They cited the August 2002 recommendation of the UN Sub-Commission on the Promotion and Protection of Human Rights that called for WTO members to ensure that all negotiations on investment respect internationally-agreed environmental, social, labour and human rights standards and promote corporate accountability (United Nations Sub-Commission on the Promotion and Protection of Human Rights 2002). UNCTAD had also been active in monitoring developments at the WTO, and the UK Trade Network drew upon this organisation's work as evidence that a liberalised foreign investment regime would be of dubious benefit to LDCs (Bailey *et al.* 2003, 2; Smythe 2003-2004, 73; UNCTAD 1999, 2000a, 2000b). The UK Trade Network additionally pointed to the World Bank's unenthusiastic assessment of proposed global rules for foreign investment. Their report quotes from the World Bank's report *Global Economic Prospects and the Developing Countries 2003: Investing to Unlock Global Opportunities*, which stated that:

[...] merely creating new protections does not seem to be strongly associated with increased investment flows. For these reasons, the overall additional stimulus of

multilateral rules that apply to new investment over and above unilateral reforms would probably be small – and virtually nonexistent for low-income developing countries (World Bank 2003 in Bailey *et al.* 2003, 2).

Similarly, Oxfam's report, *The Emperor's New Clothes*, used World Bank research as evidence that governments require policy flexibility to respond to local conditions and that domestic investors are vitally important to an economy. Meanwhile, FOEI employed a UNDP report, *Making Global Trade Work for People*, which found that there is "no clear correlation between the volume of foreign direct investment and development success" (FOEI 2003, 3). In incorporating the work of these international organisations into their own research papers, NGOs were able to boost the legitimacy of their claims about an investment agreement at the WTO.

Despite their campaign efforts, NGOs encountered little success in persuading the European Commission to abandon its push for a WTO investment agreement. Indeed, the European Commission responded with an attempt to relabel their push for a WTO investment agreement as an 'investment for development' initiative. It also proposed that investment negotiations might proceed on a 'plurilateral' basis (a negotiating approach whereby individual members submit a request list of commitments to other members) however this offer was condemned by NGOs. Similarly, NGO campaigners failed to convince the US to actively oppose the negotiation of investment rules within the WTO arena. This was because the Bush Administration was seeking an investment agreement with an even higher level of investment protection than was achievable at the WTO and was thus petitioning for high standards BITS. However, having worked to publicise the investment issue at a range of international fora and produced a body of research and analysis on the issue, the NGOs were well positioned to inform the negotiating positions of developing countries on the investment issue in preparation for the Cancún meeting.

In attempting to unite developing country governments in order to more aggressively and coherently challenge the issue at the WTO, NGOs including TWN, SEATINI, and the South Centre visited the individual WTO missions of a number of developing countries and organised a number of seminars to exchange views and other information on investment rules (CIEL 2003g; Smythe 2003-2004, 74). For example, in April 2003, at a workshop run by SEATINI in Arusha, Tanzania, NGOs urged African policy-makers and negotiators from Angola, Kenya, Lesotho, Malawi, Mozambique, Tanzania, Uganda, Zambia and Zimbabwe to oppose the launch of negotiations on the Singapore Issues (SEATINI 2003). In their negotiating strategy recommendations for Cancún, these states agreed that

African countries should take a position that the Cancún meeting decide that negotiations on the four issues should not begin. African countries should take the position that instead of starting negotiations, the process of clarification of issues (for each of the issues) should continue in the respective working groups (SEATINI 2003).

During May and June 2003, opposition to investment consolidated further at a number of meetings of developing countries. In late May 2003, the Ministers of Trade from Eastern and Southern Africa met in Nairobi, Kenya to further discuss trade issues including the Singapore Issues to prepare for Cancún. In June of 2003, the Trade Ministers of the African Union meeting in Grand Baie, Mauritius and the LDC Trade Ministers Meeting in Dhaka, Bangladesh both called for the continuation of the study process on a foreign investment agreement rather than beginning the negotiations (Ministers of Trade of the Member States of the African Union 2003; LDC Trade Ministers 2003).

On the sidelines of these meetings, NGOs actively supported developing countries. At the Dhaka LDCs meeting for example, 150 participants from 13 countries attended the 'International Civil Society Forum' organised by five international NGOs including the Centre for Policy Dialogue Bangladesh, Consumers International (Malaysia), EU-LDC Network, (the Netherlands), Oxfam International, South Asia Watch on Trade, Economics and Environment (SAWTEE, Nepal) and SEATINI. In their declaration the NGO participants called upon LDC ministers

to insist for a decision to be taken in Cancún that negotiations on investment will not be launched. There is no evidence that an investment agreement would lead to more and better quality FDI, while it would effectively limit governments' flexibility to regulate foreign investment (Centre for Policy Dialogue 2003a, 28).

NGOs additionally sent a letter of support to the LDCs (Centre for Policy Dialogue 2003b).

The 2003 Cancún Ministerial Conference

In the run-up to the Cancún ministerial, developing countries stepped up their opposition to a WTO investment agreement and the other Singapore Issues at a number of WTO meetings. At the meeting of the WTO's Trade Negotiations Committee on 2-3 April 2003, both the African Group and the LDCs Group reaffirmed their opposition to the launch of negotiations on these issues (Bailey *et al.* 2003, 7). The Bangladeshi ambassador stated that the WTO should focus on addressing the problems facing LDCs rather than obsessing over a WTO investment agreement (Bach 2003). By June 2003, the developing countries asserted that there were still areas that needed clarification such as the obligations of investors to host countries; issues surrounding technology transfer; and the lack of capacity of LDCs. In contrast, proponents argued that following the detailed discussions at WGTI, as mandated by the Doha Declaration, the time was approaching to begin the negotiations. Costa Rica and South Korea joined Canada in defending of the work of the WGTI and urged all WTO members to negotiate on investment (WTO 2003c).

At the July 2003 meeting of the WTO's General Council, a group of 12 developing countries submitted a statement reiterating their argument that the Doha Declaration did not authorise the start of investment negotiations. Despite this, a draft ministerial (with an annex) was released in late August 2003 that contained a bracketed section assuming that investment negotiations would take place post-Cancún. The annex laid out the modalities, which closely reflected those outlined in the position papers of the EU and Japan that had been fiercely debated at the WGTI. Although another bracketed section reflected the developing countries' position that negotiations would not begin following Cancún, it did not elaborate in equal detail the reasons why many developing countries opposed the issue (Focus on the Global South 2003). In late August 2003, resentment among developing country governments over the text helped promote the creation of the Group of 20 (G-20), a bloc of developing nations based on agriculture headed by Brazil, India, South Africa and China (G-20; see Table 2.2). The G-20 raised the issue of the draft text annex at the August meeting of the General Council. In response, the chairperson agreed to prepare a cover letter that acknowledged the extent of the disagreement about the text, though the text itself was not altered (WTO 2003d). Throughout this period, most developed WTO members, notably Canada, the European Commission, Japan and Chinese Taipei, continued to claim that the Doha Declaration provided a mandate to begin investment negotiations. The division became so bitter that it got to the point where India, followed by Brazil, Malaysia, and other Asian and African countries questioned the need for a WTO investment agreement at all.

The Cancún Ministerial Conference began on 10 September 2003 and ran for four days before deep divides between the developed and developing nations over the Singapore Issues, agriculture, non-agricultural market access and special and differential treatment resulted in the abandonment of the meeting. For the first three days, the conference focused on reducing barriers to agricultural trade, with the main protagonists being the EU and US on one side, and the G-20 on the other. A grouping of 32 other developing countries also emerged as the Alliance for Special Products and Special Safeguard Mechanism, which championed stronger special and differential elements for developing countries (Khor 2003b). The Group of 90 (G-90) essentially a coalition of the ACP countries, the African Group and LDCs Group (together comprising 64 WTO members) also emerged at the conference to oppose the launch of investment negotiations.¹⁶

For the NGO campaigners, just as the meetings of OECD ministers in Paris became important strategic and symbolic sites for NGO counter-summits during the anti-MAI campaign, the NGOs accredited to observe the Cancún ministerial actively campaigned against the launch of investment negotiations. At the conference, CIEL distributed a research paper entitled *International Law on*

¹⁶ There is a cross-membership among these groups. The African Group comprises all 41 African WTO members, the ACP countries comprise 56 WTO members and the LDC group comprises 32 members. See Table 2.2.

Investment: The Minimum Standard of Treatment, the Heinrich Böll Foundation organised an evening dinner debate entitled ‘Money Makes the World Go Round – The Singapore Issues: A WTO Agreement for Development Spurring Investments or a 2nd MAI?’. IISD sponsored a seminar entitled ‘Investment as if Sustainable Development Really Mattered’. The Our World Is Not For Sale (OWINFS) network organised a workshop on BITS, and CIEL hosted a workshop entitled, ‘Impacts of Trade and Investment Liberalization on Local Communities’ (CIELg). NGOs also issued statements supporting the positions of developing countries including the newly formed G-20 and G-90 (Hurrell and Narlikar 2006).

Furthermore, NGO resources and expertise resulted in developing WTO members granting NGOs an official place on their governmental delegations to the WTO’s Cancún Ministerial Conference. The official delegations of Bangladesh, India, Nepal, and several African nations included NGO representatives who provided technical and negotiating advice to government delegates (Suleri 2003). For example, the coordinator of SEATINI was granted an official place on Uganda’s delegation to the Cancún conference (Rowden 2003). At the conference itself, the presence of NGOs on official government delegations gave NGOs a privileged ‘insider’ status enabling them to further influence national positions, negotiating strategies and gain access to the normally secretive WTO negotiations. The decision of these nations to allow NGOs to form part of their delegations to the WTO reflected the complementary nature of NGO objectives in relation to trade issues of key concern to developing nations, as well as the technical and strategic assistance that NGOs had provided to developing nations prior to the conference.

The WTO negotiations on the Singapore Issues began on the first day of the Cancún conference within the smaller, issue-specific Green Room meetings from which facilitators reported back to the plenary session. Despite arguments that those members with significant interests in certain issues should not facilitate the negotiations in those issues (as this may influence the outcome of the negotiations) the Singapore Issues group was led by Pierre Pettigrew, the Canadian International Trade Minister, a strong supporter of launching the negotiations in these areas. At the meetings, pro- and anti-investment members hardened their positions. During a break in the discussions for example, the G-90 member states agreed that they would stick to their mandate that negotiations on all four Singapore Issues should not begin until the EU and the US removed preferential domestic subsidies to allow greater market access for G-90 products (Khor 2003b).

On the second day of the Singapore Issues Green Room meetings, a total of 60 developing members (comprising 30 developing nations plus Bangladesh representing 30 LDCs) sent a letter to the Canadian facilitator, Pierre Pettigrew, and the Mexican Chairperson, Luis Ernesto Derbez, comprehensively outlining their reasons for opposing an investment agreement and the other Singapore Issues (Khor 2003b). The letter complained about the process; the lack of ‘explicit consensus’; raised concerns about the limited negotiating capacity of some developing nations; and potential implementation difficulties. Significantly, they demanded the four Singapore Issues

be dealt with separately, stating that investment in particular required further clarification. They also offered an alternative wording for the draft ministerial text. According to the South Centre, NGOs activities also served to highlight the position of the developing countries:

[o]utside of the meeting rooms, some of the G-90 ministers called a press briefing in the Convention Centre's press briefing area to reiterate their opposition to the launch of negotiations on Singapore issues. It was at this press briefing that NGOs, led by WDM and Friends of the Earth International (FOEI), distributed t-shirts and badge cords that stated the dictionary meaning of "explicit consensus" to the press and delegates in order to show support for the G-90's negotiating position on Singapore issues (2003, 5).

Meanwhile, Pettigrew continued to hold intensive consultations within the Green Room, submitting his draft text to the Conference Chair on day three of the conference.

On day four (13 September), despite the objections of a large number of developing nations, a revised draft declaration appeared. This became known as the 'Derbez text' named after the Mexican Chairperson Luis Ernesto Derbez (WTO 2003e). This text maintained the stance that investment negotiations should begin, as supported by the European Commission, Canada and several other developed WTO members. Specifically, it stated that a special session of the WGTI be convened to decide the procedural and substantive modalities for negotiations. Further, the Derbez text provided little evidence of compromise on the part of developed nations in regard to agriculture. Requests from the G-20 that the US eliminate cotton subsidies, for example, were not met. The frustration and anger of developing country delegates was evident when countless developing country delegates stood to condemn the draft text and the process by which it had been developed (WTO 2003f). For example, an Indian delegate was reported as stating that the revised text had "arbitrarily disregarded views and concerns expressed by us the developing countries. We wonder now whether development here refers to only further development of the developed countries" (Alpert 2003).

In response to the intense criticism directed at the Derbez text by the G-90 and G-20, Chairman Derbez met with Ministers from the US, Europe, Mexico, Brazil, China, India, Malaysia, Kenya, and South Africa in an attempt to overcome the impasses before the end of the conference (WTO 2003f). At this point, the European Commission displayed some willingness to drop the negotiations on investment as well as competition policy while maintaining their support for the other two issues of trade facilitation and government procurement programs (European Commission 2004). However, this concession came at a very late stage and the G-90 decided to maintain its opposition to all four issues. At this juncture, Chairman Derbez stated that without consensus on the Singapore Issues, the meeting was effectively over (WTO 2003g).

During the first half of 2004, developing country ministers from the G-20 and G-90 agreed to work towards a deadline of July's General Council meeting to get the WTO negotiations back on track. However, they continued to call for the Singapore Issues to be dropped from the Doha agenda. In July 2004, the G-90 held a ministerial meeting in Port Louis in Mauritius for a strategy session on global trade negotiations. Their negotiating platform document stated:

[w]ith regard to the Singapore issues, the G-90 agrees that the three issues (Trade and Competition Policy; Trade and Investment and Transparency in Government Procurement) should be dropped from the Work Programme. The Alliance also indicates its willingness to favourably consider Trade Facilitation provided that its concerns in this area are substantively addressed and there is a satisfactory balance in the overall framework (ACP and G-90 2004).

Though Europe had offered a concession on investment and competition policy in the closing hours of the Cancún conference, in 2004, the European Commission reverted to its previous position, that the Singapore Issues were part of the single undertaking adopted in Doha (European Commission 2004; Khor 2003c). Meanwhile, the Cairns Group of agriculture exporting nations led by Australia became active in efforts to re-engage the G-20 of developing countries to seek common ground in the area of agricultural reform (DFAT 2004). The resumption of negotiations also gave rise to the establishment of the 'Five Interested Parties' consisting of Australia, Brazil, the US, India and the EU (WTO). They met a number of times at ministerial level, including on the sidelines of the April 2004 OECD Ministerial Council meeting in Paris in an attempt to clarify and resolve as many differences as possible before the WTO's July meeting (DFAT 2004). Further, the APEC nations lent their strong support to the conclusion of a WTO package in their Declaration from Pucon, Chile in June (APEC 2004).

Throughout this period, NGOs continued to campaign for and lobby WTO members to drop the Singapore Issues from the Doha agenda. In November 2003, CIEL, Focus on the Global South, IGTN, IATP, PSI, TWN, Oxfam International and WWF wrote to the WTO's General Council Chairperson reiterating their opposition to the negotiation of these issues and offering alternative recommendations (CIEL 2003f). In May 2004, a joint NGO meeting was co-organised by the TWN, World Council of Churches, Oxfam International, PSI, ICFTU, IAPT, and WWF at which NGOs discussed strategies for removing the Singapore Issues from the Doha agenda altogether (Trade For People Campaign 2004)

Eventually, at the WTO's General Council meeting on 1 August 2004, members approved a revised Doha Development Agenda work program (WTO 2004). This rescue package, which became known as 'the July Package', not only blocked but removed investment and two other Singapore Issues (competition policy and transparency in government procurement) from the Doha Round:

[...] the Council agrees that these issues, mentioned in the Doha Ministerial Declaration in paragraphs 20-22, 23-25 and 26 respectively, will not form part of the Work Program set out in that Declaration and therefore no work towards negotiations on any of these issues will take place within the WTO during the Doha Round (WTO 2004).

The other Singapore issue of trade facilitation remained on the negotiating table in line with the concession made by the G-90. The removal of three out of four of these issues from the Doha Round, including investment, is seen as a victory not only for developing countries, but the NGOs that campaigned to prevent the WTO from creating a foreign investment accord since late-2002.

Conclusion

While NGOs were not entirely pleased with the 2004 July Package, stating that the provisions for liberalisation in agriculture and other areas important to developing countries were weak, this does not subtract from their input into the international debate over the launch of a WTO investment agreement, both in the lead-up to, and during, the Cancún conference. In waging an intense campaign aimed at generating support for their position that foreign investment rules should not be incorporated into the WTO framework, the NGOs drew parallels with the previous attempt to enact multilateral foreign investment rules at the OECD. The activities of the NGO worked to inform and support a large number of developing WTO member states, including both those strongly opposed the issue, such as Brazil and India, as well as LDCs that were initially uncertain about the potential consequences of such an agreement. By meeting with developing country negotiators at NGO-organised conferences, visiting individual WTO missions, producing numerous reports and analysis into the issue and monitoring developments at the WTO, the NGOs helped build consensus among developing countries about the risks of an investment agreement.

At the Cancún conference, the NGOs continued to support the position of developing countries by reporting on and denouncing the procedures that led to the development of the draft ministerial declaration text, as well as conducting seminars and workshops on the issue for other NGO observers. Some member governments even invited NGO representatives onto their delegations to the WTO's Cancún ministerial conference, an arena in which NGOs are normally excluded. Having united together in the form of the G-90, developing countries were able to put enough pressure on pro-investment states to either make some concessions in other areas important to developing countries, particularly agriculture, or allow the negotiations to collapse. Essentially the developing countries were able to take advantage of the WTO's consensus rules to block the negotiations until they achieved progress on their objectives. Throughout the conference, NGOs monitored and reported on the proceedings lending moral support to the G-90 and G-20. As such,

this chapter reveals that in addition to their external campaign activities, a crucial aspect of NGO activity in regard to the international trade regime is the provision of policy and negotiating advice to LDCs, which can boost their leverage in the WTO arena. This is explored in further detail in the following chapter in which I compare and contrast the three cases of NGO campaigns in order to improve understandings about the agenda-setting roles of NGOs in the international trade regime.

Chapter 7

UNDERSTANDING THE AGENDA-SETTING ROLES OF NGOs AT THE WTO

Introduction

Each of the preceding case studies – the campaign for WTO labour standards, the access to medicines campaign, and the campaign against a WTO investment agreement – suggests that NGOs play a number of important roles in the agenda-setting phase of the international trade policy process. This chapter draws together these threads in a way that permits NGO campaigns to be assessed in the context of governance-based neoliberal approaches to conceptualising the role of NGOs in international trade politics. In doing so, I explain that the campaign activities of reformist NGOs on international trade issues more often facilitated, rather than impeded, the operation of the international trade regime. Through their campaigns, NGOs promote issues often neglected by WTO member states; boost the resources of LDCs; publicise the normative dimensions of trade issues; and lend moral support to the negotiating positions of member states. The chapter shows that despite their exclusion from the decision-making floor of the WTO, NGOs are nonetheless important actors in the international trade regime.

The first part of the chapter contends that NGOs publicise issues overlooked (sometimes deliberately) by WTO member states. NGOs instigate debates about the potential consequences of WTO agreements; identify aspects of WTO agreements that require review and refinement; pinpoint implementation problems at the national level; and even identify new policy areas that might be better dealt with by WTO rules. In demonstrating this, I focus on the ways in which each set of NGO campaigners utilised political opportunities to instigate international debate. Opportunities included policy crises; the self-serving activities of industrialised nations and MNCs; elections; past campaigns; and deficiencies in existing international agreements. These types of opportunities were important first steps for NGOs in lobbying for issues to be placed upon the WTO's agenda.

I then go on to examine the major NGO campaign tactics in attempting to mobilise support for their positions among nation-states. These are: promoting consensus among relevant NGOs to project a unified position among civil society; working through the negotiating arenas offered by inter-governmental institutions other than the WTO; enhancing the resources of LDC members; and utilising ties to influential member states. Where NGO goals resonated with developing countries, they tended to favour the first three tactics (promoting consensus among NGOs; working through alternative international institutions; and enhancing the negotiating resources of LDCs). In contrast, the labour campaigners primarily utilised their links to influential WTO

member states and thus placed less emphasis on mobilising support among NGOs and at international institutions other than the WTO.

While NGO activity supported select groups of nation states at the WTO (depending upon the issue), it is important to note that they appear to have little input into the ways in which issues are dealt with once on the WTO decision-making table. This reflects the nature of the agenda-setting phase: while decision-making can only take place within the WTO arena, agenda-setting may occur external to formal centres of authority. Moreover, agendas can be modified and reshaped to fit national interests, or even abandoned altogether during the negotiation phase. Nevertheless, there is some evidence emerging that a small number of NGOs are beginning to play insider roles through their participation on official government delegations to WTO ministerial conferences.

The third part of the chapter argues that by publicising the normative aspects of trade issues on human rights, equity and other social issues, NGO activity often complements the instrumental objectives of various member states, thereby having the effect of boosting their negotiating positions. In contrast to the constructivist literature on NGO in international politics, which focuses on how norms can transform interests, I examine junctions of norms and interests. Indeed, the complementary nature of NGO and state objectives in regard to each campaign issue saw NGOs serve as 'legitimacy enhancers' for particular member states. I find that while NGOs fulfilled this role in all three cases under review in this thesis, they were constrained to varying degrees, by campaign opponents (including other NGOs, states, and business actors), who attempted to mount competing normative rationales in regard to each issue. For the access to medicines and investment cases, these counter-campaigns did little to undermine the claims of NGOs. But in the labour standards case, the arguments of developing countries and NGOs opposing the social clause negatively impacted the human rights rationale put forward by the ICFTU and other labour standards advocates.

In the concluding section of the chapter I contend that the relationships between NGOs and states and the type of policy changes advocated by NGOs are crucial for understanding the agenda-setting roles of reformist NGOs at the WTO. Specifically, the ways in which campaign tactics differed across the cases depended upon the influence and power of WTO members with whom NGOs shared complementary objectives and whether the campaign goal concerned issues already covered by the WTO (TRIPS and investment) or whether they wanted to see new issues addressed by the organisation (labour standards). I also find that the US domestic political arena was important for the labour standards and medicines campaigners in publicising their issues. Finally, I explain that even though NGO activity may have the effect of boosting the negotiating positions of WTO member states, NGOs are transnational in character and their activities are sufficiently independent from states. They should not therefore be merely considered state instruments.

Publicising ‘neglected’ issues: harnessing political opportunities

The cases reveal that NGOs strategically employ available political opportunities to construct the campaign ‘narrative’, boosting the international profile of the campaign issue and generating controversy to provide impetus for change at the WTO. The most potent opportunities for NGOs include health policy crises; the self-serving activities of industrialising nations and non-state actors (particularly MNCs); the US presidential elections; past NGO campaigns; and the deficiencies of existing international agreements including those administered by institutions other than the WTO. The ways in which NGOs harnessed these opportunities is outlined in detail below. I find that while the medicines and anti-investment NGOs were able to create, and leverage from, these types of opportunities in order to project their campaign issues as pressing problems, the labour standards campaigners had fewer opportunities. This reflects the greater difficulties involved in persuading WTO members to take on a new issue in favour of modifying or removing an existing agreement.

Policy crises

For the medicines campaigners, a significant political opportunity was the HIV/AIDS epidemic that emerged in the 1980s. Essentially a health policy crisis, the HIV/AIDS epidemic provided campaigners with an illustration of the consequences of stringent IP rights in the face of national health emergencies. NGOs argued that the TRIPS Agreement was exacerbating the suffering of those afflicted with the disease who could not afford patented anti-retroviral medication. The existence of the HIV/AIDS crisis thus contributed to the sense of urgency generated by the NGO campaigners, enabling the NGOs to portray the clarification of the TRIPS safeguards as a matter of ‘life and death’, an effectual strategy for NGOs (see Keck and Sikkink 1998). Additionally, the focus on the HIV/AIDS epidemic had the impact of drawing a number of additional organisations into the campaign network. These included groups fighting for the rights of people with HIV/AIDS, such as the international group ACT UP, and local NGOs in developing nations for example the Thai Coalition on HIV/AIDS. The focus on HIV/AIDS thereby served not only as an opportunity to highlight the urgency of the issue, but encourage a broader range of NGOs not normally engaged with trade issues to become involved.

Self-serving activities of industrialised nations and MNCs

The pharmaceutical companies’ legal action against the South African government over its patent law amendment served not only as a catalyst for the access to medicines campaign, but provided a ready illustration of how the WTO’s TRIPS agreement, without clearly defined safeguards, permits pharmaceutical patent owners to seek limits on the production of affordable generic medicines in developing countries. The initiation of legal action allowed the NGOs to argue that

research pharmaceutical companies (backed by the governments of wealthy nations in which many of their headquarters are based) were utilising the legal ambiguity surrounding the TRIPS safeguards for their own economic benefit. NGOs argued that this behaviour was resulting in countless deaths from diseases such as HIV/AIDS. Thus, the medicines campaigners were able to turn the case into a public relations disaster for the MNC plaintiffs, which culminated in the withdrawal of their case against the South African government in 2000.

The subsequent initiation of dispute proceedings by the US government against Brazil at the WTO in early 2001 provided the medicines campaigners an opportunity to directly pinpoint the role of the US in pressuring developing countries and its allegiances to the research pharmaceutical companies. A sustained campaign against the US government's WTO action against Brazil and the eventual decision of the US government to withdraw these proceedings, added weight to the NGOs' claims. In a similar fashion, the letter from Europe's Trade Commissioner to then South African Vice-President Mbeki in which the EU requested that South Africa repeal its amendment because it disadvantaged European firms was also publicised by the NGOs. Further, the events of 9/11 and the subsequent bio-terror threats against the US undermined their hardline stance on TRIPS compliance and bolstered NGO claims that the US had long employed compulsory licensing as a tool to lower the price of medicines and other goods. Put simply, the legal proceedings and pressure tactics mounted against developed countries gave the NGOs an advantage in contending that the TRIPS Agreement reduced equitable access to medicines with 'life and death' consequences, and therefore required review and modification.

For the investment campaigners, the manner in which most industrialised nations previously dealt with foreign investment represented a political opportunity to highlight the unfairness of an investment agreement for developing nations. In the past, most of developed nations had imposed a range of conditions on investors to generate economic growth and development. As Chang and Green state,

[h]istory also shows that a strategic and flexible approach is essential if countries are to use foreign investment to pursue long-term national interests. Rather than sticking to one rigid recipe, most successful economies have changed their policies towards foreign investment according to changes in their stages of development, national priorities, and the world economic environment (2003, 36).

The historical use of conservative policies towards foreign investment gave NGO campaigners leverage to accuse pro-investment members of adopting double standards and 'historical amnesia' towards developing countries in regards to investment liberalisation and economic development (Bailey *et al.* 2003).

As the access to medicines NGOs did in relation to research pharmaceutical companies, the anti-investment campaigners drew upon existing concerns among NGOs and the general public about unrestrained corporate globalisation and its adverse effects on local communities and developing nations. Indeed, they pinpointed MNCs as the major beneficiaries of an investment agreement, proclaiming that MNCs would exploit developing nations and, instead of boosting developing country economies, MNC profits would be redirected back to their home countries. They also contended that a multilateral investment regime may promote financial instability in developing countries like that witnessed during the 1994 crisis in Mexico and the Asian economic meltdown in 1997.

In highlighting these issues, the NGOs drew upon fears about unaccountable global corporations, arguing that a multilateral investment accord would grant MNCs too much power in the global economy at the expense of developing states. For example, in their joint statement announcing the campaign, the leading NGOs proclaimed that a WTO investment agreement “will create a corporate bill of rights that will fundamentally favour multinational corporations while at the same time eviscerating the ability of governments to regulate foreign investment” (Oxfam International 2003). NGOs also argued that discussions on foreign investment among WTO members failed to mention the obligations of MNCs in regard to host nations, and they rejected the notion that MNCs will operate in a socially and environmentally responsible manner in the absence of government regulation (Bailey *et al.* 2003, 5).

US Presidential elections

America’s Presidential elections in 2000 provided an important opportunity for both the medicines and labour standards campaigners to employ shaming tactics against the US government to publicise their issues. As Thomas Risse explains, shaming tactics are directed at reminding “national governments of their own standards of appropriateness and collective identities and demand that they live up to these norms” (2002, 268; see also Keck and Sikkink 1998, 23-24). However, as this study demonstrates, shaming tactics must not only resonate with the supposed ideals of target actors, but involve real costs, such as the US presidential elections or threats to reputation (and thus future profits) for MNCs. Given the intense media scrutiny of presidential candidates in the US, NGOs were well placed to have their complaints about the Clinton administration’s actions in relation to international trade issues acted upon.

In the lead-up to the 2000 Presidential elections, the medicines campaigners highlighted the support of the US for the MNCs that took legal action against South Africa, as well as the direct role of the US in challenging developing states through the WTO’s dispute process. As Vice President and the Democratic Party’s presidential candidate in the 2000 elections, Al Gore was vulnerable to the accusations of HIV/AIDS protesters and other access to medicines campaigners who hijacked several of his presidential campaign rallies. Gore was particularly susceptible to

NGO pressure due to his close links with prominent figures close to the research pharmaceutical industry such as Tony Podesta, top Gore advisor and contracted lobbyist for PhRMA, his acceptance of campaign funds from this industry, and his role in authorising trade sanctions against South Africa and other developing WTO members employing safeguard measures (see ACT UP New York 1999). The NGO pressure threatened to compromise Gore's bid for the presidency by putting key allies offside, including the Congressional Black Caucus. In their defence, Gore and the Clinton Administration reiterated economic arguments stating that IP rights are necessary to encourage innovation in medical technology. However, this argument was ineffective against NGO claims about the millions of deaths in developing nations from a range of treatable diseases. Having been implicated in the court action in South Africa, and in order to retain key Democratic supporters to boost Gore's bid for the presidency, Clinton was forced to make a statement and issue an Executive Order declaring that the US would not penalise sub-Saharan African nations for using the TRIPS safeguards (see Clinton 2000).

For the labour standards campaigners, the 2000 Presidential elections were also important in providing the AFL-CIO (an ICFTU affiliate) leverage over the Clinton administration's position in regard to labour standards for the Seattle Ministerial Conference. Since the beginning of his Presidency, Clinton had a troubled relationship with US labour unions. Though NAFTA had been instigated by President George H. W. Bush, an unpopular agreement with labour unions, Clinton endorsed the NAFTA treaty (Stigliani 2000, 177-94; O'Brien *et al.* 2000). Clinton's attempt to pacify labour unions by implementing a NAFTA side agreement on labour standards was viewed as insufficient by labour unions due to its weak sanctions. With the establishment of the WTO in 1995, Clinton was careful not to further risk the relationship with trade unions and thus the AFL-CIO was granted opportunities to provide input into the US negotiating position. By the late 1990s, the looming Presidential election motivated Clinton to further engage the support of labour, historically one of the Democratic Party's strongest supporters, in order to keep his party in power at the White House (Haworth and Hughes 2004, 132). This meant that the AFL-CIO was well placed to inform the US position in regard to a WTO social clause at the Seattle Ministerial Conference. Held less than twelve months prior to the elections, press accounts claimed that the AFL-CIO played an influential role at this meeting (Nyhan 1999a; Nyhan 1999b; Stigliani 2000, 190). In the *Seattle Post-Intelligencer* for instance, Nyhan wrote that "the events represented one of the labor movement's most successful efforts to help shape the Clinton administration's trade agenda". (Nyhan 1999b).

Past NGO campaigns

While the medicines campaigners had a number of unfolding political opportunities available to them, the NGOs contesting the establishment of a WTO investment agreement drew upon prior NGO campaign events to illustrate the potential future adverse effects of a WTO investment accord, notably the mid-1990s campaign against the MAI at the OECD. The anti-MAI campaign

was a prominent, 'watershed' NGO campaign, being one of the first to employ the internet as a tool to mobilise domestic opposition to pressure individual OECD governments (Lalumiere 1998, Deibert 2003). Drawing upon the success of this campaign, the NGOs argued that the EU and other pro-investment agreement states were simply attempting to resurrect the failed MAI at the WTO. The NGOs were able to revive opposition to a multilateral investment agreement within civil society and draw upon the research and analysis already conducted and apply it in relation the newest attempt for an investment agreement at the WTO. The previous anti-MAI campaign thus created conditions conducive for a concerted push at the WTO. It enabled NGOs to reinvigorate support among civil society for what is a complex economic policy issue, which in turn allowed NGOs to present a unified opposing position on the issue. The NGO campaign against the OECD's MAI was thus a major opportunity for the NGOs in opposing a similar investment agreement at the WTO.

Deficiencies in existing international agreements

Deficiencies in existing international WTO agreements, as well as those administered by other inter-governmental organisations, also presented campaigning opportunities for NGOs. For the anti-investment NGOs, the WTO's overcrowded agenda; the associated ongoing implementation difficulties faced by developing members; the Doha 'mandate' to begin investment negotiations; and the long-running controversy surrounding the investment chapter of NAFTA were significant in this respect. They served the NGOs to demonstrate the potential costs of instituting an international investment agreement at the WTO in regard to investor-state dispute resolution. The investment chapter of NAFTA for instance has attracted a great deal of attention from North American NGOs, especially the system of arbitration whereby the award of compensation from host countries to MNCs has been said to pose financial burden for governments, particularly Mexico. The NGOs drew parallels with the WTO's DSB arguing that developing countries would come off 'second best' in investor-state dispute hearings, forcing them to compensate MNCs and/or other investors from wealthy nations. The NAFTA example thus allowed NGOs to emphasise that developing countries would lose some of their domestic policy autonomy to an international body said to be weighted towards the interests of wealthy countries and their MNCs. As stated in Oxfam International's report, "[r]ich countries will continue to use their power in this institution [the WTO] to promote the rights of investors, at the expense of developing countries' interests" (Oxfam 2003, 3). In publicising the most contentious issues surrounding NAFTA, NGOs had a strong basis upon which to contest the issue at the WTO.

Similarly, the ambitious nature of the Doha agenda and its characterisation as a 'development' round of trade negotiations formed an important component of the NGOs' characterisation of a potential WTO investment accord. The NGOs drew attention to the fact that the number of issues to be dealt with in the Doha round was overwhelming for developing countries in terms of the resources required to negotiate effectively. In fact, many were already struggling to implement

commitments made during the Uruguay round, such as those relating to IP, textiles and agriculture. Though some attempts were made to increase the negotiating capacity of LDCs at the WTO through the provision of technical assistance, many events and programs were not simply aimed at improving outcomes for developing countries, but directed at getting these nations to agree to begin negotiations on investment and the other Singapore Issues. Critics such as SEATINI for example, point to the biases of WTO assistance programs in seeking to ensure that developing countries comply with WTO accords. Further, Smythe claims that in response to hesitation on the part of LDCs to support a WTO investment accord, pro-investment states embarked upon an “aggressive program of technical assistance and capacity building largely designed to overcome this reluctance” (2003-2004, 62).

Further, NGOs utilised the controversy surrounding the ‘mandate’ in the text of the Doha Declaration (in regard to launching investment negotiations) as a point of leverage. It provided further ammunition in attacking the proponents of a WTO investment framework on the basis of the undemocratic process that had allowed events to unfold in this manner. NGOs also pointed out that several of the previous commitments made by wealthy nations to reduce barriers to trade in agriculture and manufacturing, which would boost the trade balance of developing countries, were yet to be implemented. To add insult to injury, developed nations were continuing to use agriculture as a bargaining chip to extract an increasing number of commitments from developing nations.

In addition to the US Presidential elections, the ICFTU and its campaign supporters also attempted to utilise the enforcement deficiencies of an existing international institution – the ILO – as an opportunity to incorporate labour standards into the WTO framework. In pressing their case, the ICFTU and supporters depicted the incorporation of a social clause at the newly established WTO as the solution to the relative weaknesses of the ILO in enforcing its conventions. Having lobbied for a labour clause linked to international trade for several decades, in 1995, the WTO presented the ICFTU with a new, permanent international institution with the potential to enforce core labour standards.

But, rather than being received as a logical solution for upholding workers’ rights internationally, the ICFTU’s push for the WTO to enforce labour standards created discord within the international community. It spearheaded a debate about the appropriate institutional ‘home’ for labour standards, which led social clause opponents to argue that labour standards issues should remain the exclusive domain of the ILO. Thus, while the ICFTU attempted to portray the ILO’s lack of enforcement capacity as a policy failure, and the WTO’s new arena as a new enforcement opportunity, there was an insufficient sense of urgency surrounding this issue. Instead it sparked a debate about the appropriate international arena, thereby questioning the very basis of the campaign push for the WTO to become involved in policing labour standards.

Assessing NGO political opportunism in the WTO context

This section has showed that NGO campaigns that target the WTO employ a number of different types of political opportunities to promote their causes and provoke debate amongst WTO member states. Of particular importance is the way in which NGOs seek to depict the offending activities of wealthy WTO member states and MNCs as purely self-interested and concomitantly detrimental to LDCs and their citizens. This type of political opportunity was significant for both the investment and medicines campaigners, which alleged that powerful nations and MNCs based in these nations sought to implement WTO rules for their own economic advantage with little regard for the weak and poor. In addition, two other types of opportunities proved especially valuable for NGOs in illustrating their cases in terms of the real and potential consequences of WTO accords. These were policy crises and previous NGOs campaigns. For the medicines NGOs, the HIV/AIDS epidemic, an acute health policy crisis, was helpful for the medicines campaigners in broadcasting the urgency of the TRIPS safeguards issues. In a similar manner, the previous campaign against an investment accord at the OECD assisted the anti-investment NGOs in illustrating the risks of a WTO investment accord.

The cases also show that deficiencies in existing international agreements can aid NGO campaigners, but that this can be a complicated message to propagate. For the anti-investment campaigners, NAFTA and the over-stretched Doha agenda served as a useful illustrative tool. In contrast, the emphasis of the labour campaigners on the appropriate institutional setting for the development and enforcement of labour standards only led to a protracted debate that added to the difficulties, and deflated the urgency, surrounding the need to address this regulatory issue at the WTO.

A political opportunity that was relevant to both the labour and medicines campaigners was the 2000 US Presidential elections. These cases revealed that the 2000 Presidential elections provided NGOs with some leverage over the US position on trade issues, mainly due to the need for Presidential candidates to avoid any negative publicity. The Clinton administration's decision to review its policy in relation to the TRIPS safeguards, brought about by the activists' pressure, had an impact on the TRIPS and public health issue at the international level. And, the Democratic Party's efforts to re-engage the support of labour unions in their attempt to maintain power in the White House allowed the AFL-CIO an opportunity to influence the US position in regard to a social clause. By working through domestic political arenas in powerful states like the US, NGOs are afforded an opportunity to influence negotiations at the WTO.

While it is important to note that NGOs cannot affect the types of political conditions that exist at the outset of their campaigns, all three sets of NGO campaigners attempted to strategically utilise a range of available political opportunities to publicise the controversial aspects of each issue and legitimatise their campaign goals. Political opportunities that involved shaming powerful actors were most significant, while efforts to highlight deficiencies in existing international agreements

can be problematic. Nevertheless, all three NGO campaign managed to instigate international debate among WTO member states about their cause and thus create momentum for the WTO to address their issues at ministerial conferences.

Mobilising support: NGO campaign tactics

Having stimulated controversy and international debate about their campaign issues through attempts to strategically utilise political opportunities, I now examine NGO efforts to generate support for their campaign goals and engage WTO member states on the key issues. Their strategies included hosting international meetings and workshops; issuing public statements to attract media attention; monitoring developments at the WTO; producing research and analysis; and promoting campaign issues at policy-relevant international institutions other than the WTO. In employing such tactics, the medicines and anti-investment campaigners were able to de-legitimise opposition to their goals. In contrast, the labour standards campaigners encountered difficulties. The ICFTU alienated many NGOs in developing countries (including several of its own affiliates), not to mention a majority of developing country governments. Below I explain how each of the NGO campaigns built upon their utilisation of political opportunities to mobilise support for their issues among the NGO community and WTO members, beginning with the medicines case. In doing so, I show that NGOs play roles in the agenda-setting phase of WTO policy processes by supporting the negotiating positions of member states.

The medicines campaign

From 1999 through 2001, numerous NGO-sponsored meetings and press releases helped spearhead the international campaign on TRIPS and public health, stimulating in the process a wider debate among states about the need to clarify the safeguard measures at the WTO. For example, in March 1999, MSF, CPTech and HAI sponsored a series of international meetings to discuss the use of compulsory licensing as a policy instrument for increasing access to essential medicines in developing nations. These high-profile meetings involved not only NGOs, but representatives of a range of governments, research and generic pharmaceutical companies, and the WTO and WHO. The November 1999 Amsterdam NGO statement went on to propose a WTO working group on TRIPS and public health issues and offered other solutions for dealing with the ambiguity surrounding the use of TRIPS safeguards. Throughout the course of the campaign NGOs held a number of these conferences, which provided alternative arenas for the key actors to debate the TRIPS and public health issue. NGO-organised meetings and press statements also allowed NGOs demonstrate their support for developing WTO members and inform the discussions among WTO member states.

NGOs sought to generate further support for the TRIPS safeguards issue to be dealt with at the WTO by working through international institutions such as the WHO, and several other UN organisations where they enjoy a higher status than at the WTO. At the WHO, NGOs used the WHA session on revising the WHO's drug strategy to publicise the access to medicines issue. In seeking to expand the list of essential medicines, NGOs drew attention to the needs of those in developing nations and their struggles to access medicines and treatment in the face of WTO IP rules. NGO input at the WHO spurred the organisation to become involved in the TRIPS safeguards issue; it subsequently provided legal and technical advice to developing nations on maintaining affordable access to medicines in the face of TRIPS obligations (WHO 2001). As a result, the actions of the WHO put pressure on wealthy WTO members to discuss the clarification of the TRIPS safeguards and the WHO became an observer on the WTO's TRIPS Council. This was an important step in increasing the profile of health issues at the WTO.

The debate subsequently spread to other international institutions, with the UN General Assembly, UNCHR, UNAIDS, and the World Bank weighing in on the issue. This in turn generated more publicity. UNGASS addressed the link between HIV/AIDS, TRIPS, and access to medicines at their June 2001 meeting on HIV/AIDS in New York. The UNCHR issued resolutions in 2000 and 2001 warning about the impact of TRIPS on human rights; UNAIDS discussed the link between health crises such as HIV/AIDS and TRIPS implementation; and the World Bank stated its support for the use of compulsory licensing and parallel importing to maintain access to affordable medicines in developing countries. Overall, the increasing number of international organisations that contributed to the debate not only strengthened the claims made by NGOs, but heightened the immediacy of the crisis and put pressure on the WTO to openly address the issue in 2001.

In seeking to have the TRIPS safeguard issue favourably addressed at the Doha Ministerial Conference, NGOs played a role in informing the negotiation strategy adopted by the African Group of nations. By providing information services, finances, and technical advice, the NGOs helped developing WTO members to unify and consolidate their negotiating positions, boosting their position inside the WTO. Specifically, NGOs assisted developing countries to frame their demands in terms of what they considered realistically achievable at the WTO. NGOs helped reshape the broad debate about the inequality of access to medicines to a more narrow focus upon the appropriate legal interpretation of the TRIPS safeguard provisions. With NGO assistance, the developing countries "articulated concerns that were specific, and sought remedial measures. This was not a request for the initiation of a vaguely chartered 'work program'" (Abbott 2002, 482). Additionally, NGOs encouraged developing countries to insist upon a WTO ministerial declaration to clarify the use of TRIPS safeguards at the TRIPS Council meetings (Shadlen 2004, 94). Their demands resulted in the Doha Declaration on TRIPS and Public Health.

One of the most significant aspects of the NGO role in informing the negotiating positions of developing states were their contributions to papers for the TRIPS Council meetings and the draft

ministerial declaration text proposed by developing countries. For example, the lead paper submitted by 71 developing nations at the first TRIPS Council Special Session entitled 'TRIPS and Public Health', reiterated the concerns raised by NGOs at the WHO, UN General Assembly and the UNCHR (Abbott 2002, 482). Alongside TRIP Council meetings NGOs issued their own public statements that supported the position of the developing countries. On top of this, NGOs helped devise portions of what became the WTO's Declaration on TRIPS and Public Health (Sell 2002, 512). According to one NGO website, "[m]eetings at Quaker House Geneva have allowed developing countries to consolidate their positions and draft portions of the so-called Doha declaration" (Quakers in Britain). As a WTO representative contended, NGOs thus made a significant contribution in the agenda-setting phase leading up to the development of the Doha Declaration on TRIPS and Public Health, which ultimately incorporated a great many of their demands (Interview, WTO External Relations Division Representative, 2006).

The investment campaign

In a similar manner to the medicines campaigners, the high-profile NGO workshops and conferences dedicated to investment and the other Singapore Issues held during 2003 brought a range of different NGOs together to discuss campaign strategy and generated opposition to a WTO investment agreement among member states in preparation for the Cancún Ministerial Conference. A number of NGO sign-on statements, letters and declarations, such as *No Investment Negotiations at the WTO: Declaration of Non Governmental Groups and Civil Society Movements*, were produced and disseminated around the world, encouraging an increasing number of NGOs to lend their support. Further, a number of research papers on the matter were produced, such as the UK Trade Network's May 2003 report *Unwanted, Unproductive and Unbalanced: Six Arguments Against an Investment Agreement at the WTO*. Distributed among NGOs and WTO member governments, these reports, combined with the NGOs conferences, workshops and other public statements, highlighted the issues surrounding a potential WTO investment agreement and supported developing country governments in opposing the issue at the WTO.

Of the international conferences organised by NGOs on the investment issue, the March 2003 seminar series was especially important for NGOs in supplementing the negotiating resources of developing countries. These seminars, which brought together the major voices in the debate including representatives of the US, EU, developing countries and international organisations, was an important forum for informing and consolidating the positions of developing and under-developed nations. With strong arguments being made by NGOs, international organisations such as UNCTAD and the UNCHR and larger developing countries, many LCDs were persuaded to support the idea that a WTO investment agreement would also adversely affect their interests. As a representative of Oxfam International explained, some developing WTO members were initially uncertain about the pitfalls of an investment agreement, but the Geneva meetings and numerous

NGOs research papers persuaded many LDCs to oppose the issue and present a unified position at Cancún (Interview, Oxfam International, Geneva Advocacy Office, 2006).

In mobilising support for their interpretation of the negative aspects of a WTO investment agreement, the NGOs utilised the work of prominent international organisations. The UNDP, UNCTAD, the UNCHR and the World Bank had already conducted their own research into the matter and had found that a WTO investment agreement would likely not deliver any substantial benefits to developing countries. NGOs drew upon this research and expertise to boost the credibility of their arguments about the potential risks for developing countries of liberalised international investment rules. Further, NGOs received support from UNCTAD's Dr Yilmaz Akyuz (Director of the Division on Globalization and Development Strategies and Chief Economist) and Bhagirath Lal Das (UNCTAD's former Director of International Trade Programs). Drawing upon all of these varied sources in their campaign pitch, NGOs informed the position of developing countries, which subsequently declared their strong opposition to a WTO investment agreement. Prior to Cancún, trade ministers from Eastern and Southern African nations, the African Union, and the LDC Group all declared their opposition to launching a WTO investment agreement, instead calling for the study process to continue.

Having publicised their opposition to instituting an investment accord at the WTO and encouraged many LDCs to oppose it on the grounds that it would run counter to their national interests, the NGOs played an important role in enhancing the resources of developing states to contest the issue at the WTO. The major way in which they did so was as information providers. NGOs reported developments at the WTO in their regular newsletters and online material. IISD, ICTSD, TWN, IAPT and Focus on the Global South were most prolific in this regard. In the run-up to the Cancún conference, NGOs made a number of visits to individual WTO missions (including Brazil and South Africa) to exchange views and other information on the investment issue (CIEL). Meanwhile, groups such as TWN, SEATINI and the South Centre helped facilitate meetings between developing WTO members to generate consensus and build unity. These meetings allowed NGOs to contribute to the negotiating strategy for opposing the launch of investment negotiations at the Cancún conference (Symthe 2003-2004, 74). This occurred for instance at the April 2003 SEATINI workshop where NGOs urged African negotiators to oppose the launch of negotiations on all of the Singapore Issues. This resulted in the participating nations developing a declaration of recommendations outlining their opposition to the investment issue and a clear negotiating strategy to take to Cancún ministerial (SEATINI 2003).

NGO expertise also resulted in developing WTO members granting NGOs an official place on their governmental delegations to the WTO's Cancún ministerial conference. The official delegations of Bangladesh, India, Nepal, and several African nations included NGO representatives who provided technical and negotiating advice to government delegates (Suleri 2003). The coordinator of SEATINI was granted an official place on Uganda's delegation to the

Cancún conference (Rowden 2003). At the conference itself, the presence of NGOs on official government delegations gave NGOs a privileged 'insider' status enabling them to further influence national positions, negotiating strategies and gain access to the normally secretive WTO negotiations. The decision of these nations to allow NGOs to form part of their delegations reflected the complementary nature of NGO objectives in relation to trade issues of key concern to developing nations, as well as the level of technical and strategic assistance that NGOs provided to developing nations prior to the conference.

At the Cancún meeting in September 2003, NGOs boosted the position of developing countries both external to and inside the conference. The almost unanimous denunciations of the draft text by the NGOs and activists that organised the street demonstrations gave psychological support to LDC government officials (Rowden 2003). Inside the conference venue, NGOs that had been accredited to observe the Cancún ministerial distributed research papers, organised debates, seminars and workshops and issued statements supporting the positions of developing countries including the newly formed G-20 and G-90. And the NGOs admitted onto official government delegations to the conference provided LDC negotiators with technical support and advice.

A number of participants and commentators have pointed to the evolution in relations between NGOs and developing countries at Cancún. The Brazilian Minister of External Relations, Celso Amorim, for example, stated that developing nations were able to hold firm to their positions due to the NGOs' work in assisting government delegations (Amorim in Delgado and Soares 2005, 21). Similarly, a representative of the Australian Bureau of Agricultural and Resource Economics (an Australian government economic research agency) compared the increasing involvement of NGOs in the negotiations and the evolving "style of interaction" between NGOs and WTO members to that in place at UN agencies (Fisher in The Parliament of the Commonwealth of Australia 2004, 11-12). Moreover, European Commission negotiator Franz Fischler *blamed* the NGOs for encouraging the developing nations to 'thwart progress' on the negotiations. Fischler told the press that the failure of the meeting "was led partly by NGOs, they conveyed the message to developing countries that no deal was better than a bad deal" (Smith 2003). Further, David Hartridge, a trade law consultant and former Acting WTO Director-General contended,

[...] the ACP countries were very badly advised to be so intransigent over the Singapore Issues [...] Some NGOs, including some of those who celebrated the breakdown, were very close to this negotiation, much closer than I have ever seen before (2003).

In response to such comments, CAFOD stated that if NGOs (both Northern and Southern) had influenced the Cancún breakdown, "officials and politicians would do well to reflect why, despite their limited political clout and research budgets, NGO arguments have resonated so strongly with developing countries' own experience" (2003).

Thus, NGOs played a significant role in supporting developing WTO members at Cancún. NGO

input informed the decision of LDCs to stake progress at Cancún on preventing the launch of investment negotiations. They eventually achieved their objectives in overseeing the removal of investment from the Doha Agenda in July 2004. Had the NGOs not got involved in campaigning on the investment issue, only India and other large developing nations would have challenged the draft ministerial texts that kept the Singapore Issues on the negotiating table. But because the vast majority of developing nations, comprising the G-90, and G-20 refused to agree to launch investment negotiations, it was much more difficult for pro-investment member states to dismiss their concerns.

The labour standards campaign

In contrast to the strategy adopted by the medicines and anti-investment campaigners which revolved around promoting consensus among NGOs to generate a unified civil society voice on the issues, the ICFTU focused more heavily upon its links with influential WTO member states. This was due to the level of disagreement among the international NGO community on the issue of incorporating labour standards into WTO rules. Indeed, the ICFTU, one of the largest international non-governmental federations, even failed to ensure the wholehearted support of its affiliates in developing countries. This stemmed not only from the commanding top-down nature of the ICFTU's campaign, but a more fundamental divide over the merits of a WTO social clause. This was a particular problem in the lead-up to the Singapore ministerial conference in 1996, during which there was little discussion among ICFTU affiliates about the campaign (Anner 2001, 48).

Despite the fact that several prominent international NGOs, including Solidar, Christian Aid and Oxfam supported the cause, the ICFTU held few joint activities with other NGOs. For example, Oxfam International and Christian Aid essentially ran their own labour standards campaigns. The ICFTU's reluctance to cooperate is also illustrated by the haphazard establishment of the Workers' Rights Caucus for the Singapore ministerial. Not only was the invitation of the NGOs to the ICFTU's pre-ministerial workshop an afterthought, but the Workers' Rights Caucus was a 'last minute' decision spearheaded by the other NGOs rather than the ICFTU (O'Brien *et al.* 2000, 86). Following Singapore, the Workers' Rights Caucus disintegrated. By failing to take advantage of its formal links with developing country affiliates and the potential for a greater level of joint activity with other international NGOs, the ICFTU missed an opportunity to generate momentum for the message that a social clause was essential for the international NGO community's support for trade liberalisation. One major result was that the ICFTU left itself open to accusations that a WTO social clause would only benefit trade unionists in wealthy WTO member states.

Following the Singapore conference, where the ICFTU encountered unyielding opposition from the TWN-led coalition of developing country intellectuals, trade unions and NGOs, the ICFTU was forced to reassess its low level of engagement with affiliates and other NGOs. In attempting to do so, it hosted meetings in developing countries with affiliates and disseminated campaign

information material. Yet for the Geneva and Seattle ministerials, the campaign remained a top-down affair. As Shankar Gopal contends, “Western NGOs and unions made minimal efforts to coordinate or understand the needs and demands of third world actors in formulating their agendas or strategies” (Gopal 2001 in Kolben 2006, 253). In addition, the issue of labour standards was of secondary interest to labour unions in developing countries. In regard to international trade, Southern unionists and NGOs were far more concerned with debt relief; fair market access for agricultural and other goods; poverty alleviation; technology transfer; development; and women’s rights (Anner 2001). In other words, developing country groups argued that greater market access would do more to provide the economic conditions conducive to higher labour standards. Thus, while the campaigns to influence the Geneva and Seattle conferences were far better organised, affiliates in developing countries still had little input into the campaign. One plausible explanation for this is that the ICFTU’s policies and goals were heavily influenced by the largest due paying members based in Western Europe and North America (O’Brien *et al.* 2000, 85).

Despite the ICFTU’s inability to promote a broad consensus for its position due to a number of campaign missteps, the labour standards issue did generate a high level of international controversy involving the large developing states and pro-labour governments, as well as opposing NGOs. In combination with the support of influential WTO member states, this controversy meant that the ICFTU was still able to play an agenda-setting role. Specifically, ICFTU was able to bypass these difficulties through their relationships with the US and European states, which strongly supported the trade-labour linkage. Indeed, the ICFTU received financial support from pro-labour states such as Norway; direct invitations to contribute to national trade policy positions including those of South Africa and the UK; and to participate in national delegations to WTO ministerial conferences for states as diverse as Egypt, Canada, Denmark and Kenya. Therefore, NGOs were not as reliant on mobilising consensus among civil society groups as they already had a more direct route to influencing the WTO via more influential WTO member states, including the US, which shared their goal for a WTO social clause.

Assessing NGO campaign tactics at the agenda-setting phase

Together, the three cases reveal that the utilisation of various tactics and strategies to mobilise support for their causes render NGOs important actors at the agenda-setting stage of international trade policy processes. I find that NGO campaign tactics in targeting the WTO fall into four categories: hosting international workshops and issuing declarations; working through alternative inter-governmental institutions; enhancing the resources of LDCs; and utilising ties to influential WTO member states. However, the cases vary in that NGOs placed more or less emphasis on different tactics according to whether their objectives aligned with developed or developing countries. While the access to medicines and anti-investment campaigners adopted a multi-pronged approach by engaging in joint activities, boosting the resources of LDCs and drawing

upon the support of alternative inter-governmental institutions, labour standards campaigners placed more emphasis on their links with influential WTO member states.

The medicines and investment campaigners benefited from a high level of support among a broad range of NGOs active on international trade issues. To establish their campaign platforms, the NGOs held meetings to discuss the key issues and coordinate their tactics. They went on to host international conferences and workshops bringing a variety of actors to the table including representatives of governments, MNCs and inter-governmental institutions. Furthermore, they intensively publicised their causes within alternative international arenas to support WTO member states in contest the campaign issues within the WTO. NGO campaign activities resulted in the production of valuable information resources for LDCs developing countries (with whom they shared a complementary view on the issues at stake), which informed the negotiating strategies of these states at WTO ministerial conferences. This NGO role was especially beneficial for the many LDCs that have limited resources to represent themselves adequately in Geneva. Indeed, Ostry has described the monitoring role of NGOs as a “virtual secretariat launched by the internet” (2006, 146; see also Smythe 2003-2004, 73-74). As the commentary from several different sources reveals – including representatives of LDCs, the WTO, NGOs and the European Commission – NGO campaigners played a significant role in assisting developing countries at WTO ministerial conferences.

Conversely, the ICFTU campaigners placed the most emphasis on their ties with influential WTO member states in their campaigning strategy. Having held the goal of institutionalising the link between international trade and international labour standards for several decades, the ICFTU did not establish their campaign platform and goals in negotiation with a broad range of NGOs active on trade issues. Indeed, the ICFTU failed to take into account the needs or campaigning suggestions of affiliates in developing countries, nor did they adequately engage with other international NGOs that supported the cause. Moreover, the ICFTU placed little emphasis on drumming up support at alternative international institutions, which may have persuaded some LDCs to be less hostile to their goals. But despite all of these flaws, the ICFTU’s links with various influential governments were sufficient for allowing the organisation to see the issue of core labour standards addressed at the WTO’s Singapore, Geneva and Seattle ministerial conferences.

Although they utilised different tactics, ultimately, all three sets of NGO campaigners played agenda-setting roles at the WTO. The medicines case shows that NGOs play a role in identifying areas where the WTO decision-making has encountered implementation problems and requires review; the labour standards case illustrates that NGOs help highlight potential new areas that might be dealt with through WTO rules; and the investment case demonstrates that NGOs publicise potential consequences of agreements in the process of negotiation. As this section outlining the key strategies of NGO campaigners attests, while they play a variety of important

roles in the agenda-setting stage of international trade policy making, NGOs appear to have little input into the ways in which issues were dealt with once on the WTO decision-making table.

To further illustrate the relationships between NGOs and WTO member states, I now examine another effect of NGO campaigns within the international trade regime, their role in legitimising the negotiating positions of WTO member states (and the positions of other private actors) whose interests coincide with NGO normative objectives.

Coinciding norms and interests: NGOs as ‘legitimacy enhancers’

Though NGOs are widely understood as agents of moral or normative values in international politics, there exists only a small literature on how NGO normative values intersect with the instrumental objectives of other actors, and what the consequences are for international policy processes and outcomes (see Boehmer-Christiansen and Kellow 2002; DeMars 2005; Ronit 2007). One problematic feature of the constructivist literature on NGOs in international politics is its relegation of interests and power to the role of norms disseminated by NGOs. To assess the role of NGOs in relation to international trade governance however, it is necessary to examine the *convergence* of norms and interests rather than the dominance of norms over interests or *vice-versa* (Shue 1995; Sell and Prakash 2004). According to Bruce Yandle’s ‘Baptists and bootleggers’ theory of regulation (1983), coalitions comprising organisations or individuals that support policies on ethical grounds (the ‘Baptists’) and those that support policies for self-interested reasons (the ‘bootleggers’) will come together to support policies from which they both gain, albeit, for their own reasons. Combined, normative and instrumental motivations for particular policy positions can be persuasive within domestic policy processes and at the international level.

By publicising the social and equity dimensions of international trade issues through their campaigns, NGO arguments for policy change at the WTO often complement the instrumental goals of states in relation to the given issue. As such, NGOs can serve as ‘legitimacy enhancers’ for particular WTO member states in international trade policy debates, thereby strengthening a member’s (or group of members’) negotiating position within the WTO arena. This NGO role is especially visible in regard to the labour standards campaign where the pro-labour states were influential WTO members and thus already had the capacity to have the issue discussed at the WTO. For the medicines and investment campaigns, NGOs highlighted human rights, equity and sovereignty norms, which served the interests of developing states in seeking to limit WTO authority over their domestic policy decisions. In all three cases however, opposing NGOs, various states and/or business actors sought to dent the normative rationales provided by NGO campaigners with alternative normative rationales for the status quo position. TWN for instance, was adept in questioning the motives underlying the ICFTU and pro-labour states in pushing for a

WTO social clause. While competing normative perspectives significantly overshadowed the claims of labour standards advocates, they had limited bearing upon the role of the medicines and investment NGOs in enhancing the legitimacy of developing state interests.

The labour standards campaign

The ICFTU and pro-labour WTO member states played highly complementary roles in promoting a WTO social clause. In publicising the human rights arguments for enforcing core labour standards at the WTO over the economic aspects, the ICFTU was viewed by critics as attempting to camouflage their own self-interested motivations in supporting the clause. It should be noted that the relationship between the ICFTU, other NGO supporters and pro-labour states was not quite as simple as a 'Baptist and bootlegger' coalition whereby one party masked their instrumental objectives with the normative rationale supplied by another group (Yandle 1983). Indeed, both the ICFTU and pro-labour states shared a normative commitment to achieving greater international compliance with the core ILO conventions. And both sets of actors stood to gain from a WTO social clause, albeit in different respects: the ICFTU were attempting to prevent the erosion of working conditions of union members (particularly those in wealthy states), while pro-labour WTO member states sought to maintain domestic employment and wages, reduce trade deficits, and gain political capital from supporting local firms utilising labour as a key input. Further, a speech by Alan Larson, Acting Under Secretary for Economic, Business and Agricultural Affairs at the US State Department, reveals that Congressional budget restrictions on UN agencies and the State Department were also behind the push to shift new items such as labour onto the WTO agenda (Donald 1999). Clinton's attempts to engage the support of labour unions and more generally win protectionist sympathy amongst US voters in order to win the 2000 US elections for the Democratic Party was another key motivation for supporting a labour clause at the WTO.

However, in promoting a WTO social clause, *both* the ICFTU and pro-labour states deferred to human rights and 'fairness' arguments ahead of their instrumental objectives. As Acting USTR Barchevsky stated at the WTO's Singapore ministerial for example, "[w]e believe strongly that increased trade and the economic growth that it brings should also engender greater respect for the basic human rights which are the focus of our core labour standards proposal" (WTO 1996). Ultimately, though, it was the ICFTU, as a high-profile, representative non-governmental group, which was best placed to project human rights arguments that underpinned the push for the social clause.

The labour standards campaign shows that NGO relationships with powerful WTO member states can be a very fine balancing act – one that in this case the ICFTU failed to manage. By working alongside powerful states to achieve a common goal, the ICFTU failed to enhance the legitimacy of their motives. Instead, in so closely aligning with the US and European states, the ICFTU traded

in some of its own legitimacy, which left the organisation and its goals open to accusations from developing states and NGOs (including some of their own affiliates) of selfish elitism. Thus the promotion of the moral aspects of the issue by the ICFTU failed to cloak the protectionist and other instrumental motives underlying the cause. Instead, economic interests led to the polarisation of actors into developed/developing country groups. This divide meant that pro-labour states were unable to gain the support of the majority of WTO members – developing states – to support the issue at the WTO.

Underpinning the ICFTU's difficulties in promoting their cause was the regulatory nature of labour standards, which threatened to impose severe costs on developing countries. The complexity of the potential allocation of costs and benefits significantly hampered the efforts of the ICFTU to project the issue as one of fundamental human rights. It also affected their capacity to frame and disseminate a simple, unambiguous rationale for a WTO social clause. The issue was not amenable to simplification due to the difficulties involved in instituting international regulatory standards of this type. This was further exacerbated by the fact that the ICFTU campaigners wished to see punitive measures enacted to enforce labour standards through the WTO's DSB. In other words, unlike other international NGO campaigns that have successfully framed issues as unalienable human rights, this strategy was ineffective for the ICFTU due to the costs at stake for developing countries. Despite softening their stance on trade sanctions prior to the Seattle ministerial, opponents were left suspicious of the ICFTU's ultimate goals. As affiliate organisation COSATU noted, the ICFTU "could have done a better job" in explaining that the campaign was not based upon protection for the global North (Anner 2001, 56). US President Clinton's comments to the press during the Seattle conference concerning the use of trade sanctions to uphold labour standards did little to help.

As a result, developing countries and NGOs (led by TWN) were able to hijack the labour standards campaign. In moving the focus away from human rights, opponents claimed that protectionist motives belied the campaign and that the entire issue was emblematic of the raw deal that developing countries were receiving at the WTO. They characterised the labour standards push as part of the 'bullying tactics' of developed nations in attempting to retain their economic power over the global South. Thus, the TWN statements framed the issue as another North/South debate, which neutralised the ICFTU's claims about international workers' solidarity. Even though the TWN and supporters had questionable links to those they claimed to speak for, the message that the ICFTU only represented privileged Northern-based unions reinforced the accusations of protectionism. As such, developing countries and vocal NGOs like TWN deflated the potency of the human rights rationale for a WTO social clause. They provided a competing normative rationale based on national sovereignty and economic development.

The investment campaign

In a similar manner to the ICFTU, the activity of the NGO campaigners in opposing the launch of investment negotiations at the WTO helped legitimise the goals of a section of WTO member states, especially India, which had opposed the investment issue from the beginning. In drawing attention to the potential consequences of an “indiscriminate” WTO investment agreement, NGOs promoted the sovereign right of developing countries to pursue their own policy objectives, contending that the development needs of LDCs must be taken into consideration (Singh 2003, 6). At the Cancún conference, this position was reinforced by those NGOs and other activists protesting under the slogan ‘No Deal is Better Than a Bad Deal’. In an ultimately unsuccessful attempt to counter NGO claims about the accord’s impact on developing countries, the EU characterised the proposed accord as ‘an investment for development framework’ (Oxfam International 2003, 24; see also Bailey *et al.* 2003, 1). This alternative rationale failed to resonate as NGOs and developing nations simply discredited it by pointing to the lack of progress on the trade issues said to be of greatest benefit to developing countries.

The campaign activities of NGOs elevated the significance of the investment issue (along with the three other Singapore Issues) as a key point of debate among WTO members. In doing so, they provided developing countries with an important bargaining chip at the Cancún conference. Up until the NGO campaign, the investment issue had not been on the radar of many developing countries other than India (Interview, Oxfam International Geneva Advocacy Office Representative, 2006). Developing countries were able to point to the investment issue as yet another key area, in addition to agriculture, where developing countries’ interests were being compromised by more powerful industrialised member states. With this additional bargaining chip, developing countries were well positioned to demonstrate that they were receiving little benefit from the Doha Round, despite the development ideals supposedly underpinning the negotiations. Through the G-90 and the G-20 bargaining coalitions, developing countries were able to take advantage of WTO negotiating procedures, especially the single undertaking, by making their support for an investment agreement conditional upon their receipt of concessions in the area of agriculture.

The medicines campaign

In lobbying for a more relaxed interpretation of the TRIPS safeguard measures, the medicines campaigners had the effect of camouflaging the interests of developing countries and generics pharmaceutical manufacturers. Developing countries had important interests at stake in regard to this issue, but in economic terms, the larger developing and newly industrialising countries stood to lose more than the majority of LDCs. Brazil and India have their own generic medicines manufacturers, thus giving them a major interest in a clarification of the TRIPS safeguards to allow compulsory licensing and parallel importing on a wider basis. India for example, since abolishing patent protection for medicines in 1972 (Baker 2005), has become the world’s leading

supplier of generic medicines and exports to other developing nations where medicines have not been patented (Barton 2004; Oxfam, Make Trade Fair). Similarly, Brazil has an important domestic industry and has been exporting generic medicines to LDCs for over a decade ('t Hoen 2002). Further, most developing countries, ranging from the least developed to the newly industrialised, faced not only the costs involved in supplying patented medicines instead of cheaper generic versions, but the administrative and enforcement costs of enacting patent regimes to become TRIPS compliant. Industrialised nations did not face these same costs because IP rights regimes had been long in operation, in some cases, as long as two centuries. The US Congress for instance, adopted its first patent law in 1790.

In addition to the human rights and sovereignty issues at stake, an appreciation of the economic interests associated with the TRIPS safeguards helps explain the role of India and Brazil in spearheading attempts to clarify the issue at the WTO and the attempts of the African Group to present a united front at Doha. It also makes clear why generic pharmaceutical companies like Cipla and organisations representing the generic medicines industry such as the European Generics medicines Association (EGA) worked alongside public interest NGOs in contesting this issue. In emphasising the human rights and sovereignty aspects of the TRIPS and public health issue, the NGO campaign helped mask some of the economic interests of developing countries and generic medicine manufacturing firms seeking to maintain their market shares. In their efforts to boost medicine access, MSF even exported a limited *tranche* of generic medicines to LDCs (MSF and Cipla 2001). In doing so, they actively supported Brazil in its fight to continue exporting generic medicines produced under compulsory licence to other developing countries in the face of US pressure. NGO activity thus promoted the generic medicines manufacturing industry and the market share of generics manufacturers more generally.

In eventually withdrawing support for the MNCs in their legal proceedings against South Africa and agreeing to the Doha Declaration on TRIPS and Public Health, the US did not simply capitulate to NGO demands and 'see the light' in regard to the public health needs of developing country citizens. Instead the US was motivated not only by the need to dampen criticism of presidential candidate Al Gore brought about by NGO campaigners, but later utilise compulsory licensing as a bargaining chip to reduce prices for anthrax drugs in preparation for potential bio-terror threats following 9/11. In the face of NGO exposés at Gore campaign rallies detailing the candidate's links with the research pharmaceutical industry, receipt of campaign funds from this industry, and role in threatening the South African government with trade sanctions (ACT UP New York 1999), the NGOs successfully pressured the Clinton administration over the access to medicines issue. This resulted in the US Congressional Black Caucus threatening to withdraw support for Gore's bid for the presidency. Essentially NGO efforts in regard to the 2000 Presidential elections meant that the priorities of the Clinton administration switched from protecting the rights of their research pharmaceutical companies to holding onto power for the Democratic Party.

However, in June 2000, only one month after Clinton issued an Executive Order pledging to support the use of compulsory licensing to increase access to HIV/AIDS medicines in sub-Saharan Africa, the US targeted Brazil's IP laws, which allow for compulsory licensing. As such, the confrontation of Gore at election campaign rallies was not the most important factor in the US government's eventual decision to support the Doha Declaration on TRIPS and Public Health as suggested by some commentators (Morrison 2001, 199-200; Thomas 2002, 257). In fact, it was not until after the US government recognised that it may need to issue compulsory licenses of its own for national emergencies resulting from terrorist acts that its position softened. NGOs played an important role here in publicising US hypocrisy in regard to compulsory licensing. As such, the US did not simply accept the norm of equal access to medicines but responded to its shifting priorities and interests. Nevertheless, the NGO campaign did play a significant role in highlighting offending US activities along the way.

Among the international organisations supporting the clarification of the TRIPS Agreement at the WTO, the World Bank did so mostly for its own budgetary reasons. The World Bank provides funds for the supply of essential medicines to developing nations, spending approximately \$US800 million dollars on pharmaceuticals annually. The World Bank was also a co-sponsor of UNAIDS. As such, the World Bank, despite its neoliberal agenda, supported the use of policy measures such as compulsory licensing and parallel importing of pharmaceuticals in developing countries as the purchase of generics would significantly reduce the Bank's costs (Vick 1999). Nevertheless, the World Bank, like many other actors supportive of the clarification of the issue at the WTO wished to be seen to back the issue for social justice reasons. At a MSF meeting for instance, a World Bank official asserted that the current pricing situation "shows an increasing disconnect with the needs of the majority of the people in the world" (Vick 1999).

In attempting to dent the claims and arguments put forward by the medicines campaigners, generics manufacturers and developing countries, the research pharmaceutical industry published and disseminated the Attaran and Gillespie-White study to demonstrate that upholding patents is vital for the development of new medicines (Attaran and Gillespie-White 2001). However, this failed to gain traction as it was a far less appealing narrative than the NGOs' emotive claims about the 'life and death' implications of strictly upholding patents and the profiteering of unaccountable global pharmaceutical companies. Had the study more explicitly pinpointed the economic benefits and other instrumental interests at stake in this debate, they may have encountered a greater level of success.

Though the human rights motivations of developing countries were tied up with their instrumental reasons for promoting a broader interpretation of the TRIPS safeguards, one interesting point of departure from this position that undermined NGO claims was South African President Thabo Mbeki's publically stated scepticism about the link between HIV and AIDS (CNN 2000). Shortly after becoming South Africa's President in 1999, Thabo Mbeki created a great deal of controversy

when he invited several outspoken HIV/AIDS ‘deniers’ (who essentially rejected the link between HIV and AIDS) to join his Presidential AIDS Advisory Panel. In response, the international scientific community challenged President Mbeki’s views through the publication of a document affirming that HIV causes AIDS (the ‘Durban Declaration’), signed by over 5,000 scientists and physicians. This declaration appeared in the journal *Nature* shortly before the thirteenth AIDS conference, held in Durban, South Africa, in July 2000 (Anonymous 2000). However, for two years, President Mbeki and his government continued to vacillate over the causes of AIDS and how the disease should be dealt with (van Rijn 2006, 522). These actions were seen as a distraction from the NGO campaign that sought to impress the urgency of the HIV/AIDS crisis and the need to provide affordable access to medicines to treat the disease.

For all three cases of NGO campaigns then, NGOs played a role in legitimising the interests of WTO member states by highlighting moral arguments for policy change at the WTO. These arguments complemented the instrumental objectives of member states. The ICFTU highlighted the human rights dimensions of labour standards over the economic benefits for industrialised states, the investment campaigns provided LDCs with an additional bargaining chip for the Cancún conference, and the medicines campaigners helped promote the interests of the developing countries with generic medicines industries, as well as the generics manufacturers themselves. In response, various campaign opponents seeking to protect their own interests, including opposing states and MNCs, attempted to mount competing normative rationales, albeit, with differing levels of success.

The analysis here shows that the relationships between NGOs and states with complementary objectives cannot simply be described as ‘Baptist-bootlegger’ coalitions, whereby NGOs ‘masked’ the self-interests of states. Indeed, states also possess normative goals in relation to international trade issues, though they are not always well placed to project such arguments. In examining the role of NGOs in packaging and publicising normative rationales for trade policy positions, I find that NGOs play important roles at the agenda-setting stages of the international trade policy process that have the effect of supporting and/or undermining the capacity of various nation-states to achieve their goals at the WTO.

Conclusion

While NGOs do pose a challenge for inter-governmental organisations, they also play important roles in supplementing these organisations. In comparing and contrasting the findings of the three case studies of NGO campaigns directed at the WTO, I have found that NGOs play roles in international trade politics at the agenda-setting stage of policy-making. In their publicist role, NGOs seek to strategically utilise political opportunities (such as policy crises; the self-serving activities of industrialised nations and MNCs; elections; past campaigns; and deficiencies in

existing international agreements) to provoke international debate about their issues. In attempting to mobilise support among relevant NGOs and amenable WTO member states for their goals, NGO campaigners host international conferences; release joint declarations and press statements; work through alternative intergovernmental arenas; enhance the resources of LDCs; and utilise their ties with powerful WTO member states. I also found that in highlighting normative rationales for policy change, NGO campaign activity has the effect of boosting the legitimacy of negotiating positions adopted by WTO member states.

This study has revealed that in the WTO context, NGOs have different relationships with WTO member states according to their development status and this shapes the roles they play in the international trade regime. NGOs play the most active roles in the international trade policy process when their normative objectives align with LDCs rather than with influential WTO member states. NGO campaigners produce valuable information materials that enhance the negotiating resources of capacity-constrained less developed WTO member states. They facilitate the WTO decision-making process by producing reports, updates, and commentary on WTO issues and the progress of negotiations. NGOs also host international conferences that bring the key players in a trade policy debate together. By contributing to the information and analysis available and airing alternative perspectives on trade policy matters, NGO activity has the effect of putting developing countries in a more equal negotiating position in the WTO arena, increasing their potential to realise gains from the trade negotiation process. For the medicines campaign, NGOs even contributed to the negotiating strategy of the African Group. And for the investment case, NGOs informed the negotiating position of the G-90 member states. Given that WTO decision-making procedures are premised upon the equality of member states in the negotiating arena (one member, one vote), the role of NGOs as resource enhancers for LDCs is an important role indeed.

In addition to their resource-enhancing activity for LDCs, NGOs also publicise the normative rationales for policy change at the WTO thereby serving to enhance the legitimacy of the complementary instrumental objectives possessed by WTO member states in relation to campaign issues. This role is especially visible for wealthy states and the larger developing states, such as India and Brazil, which, unlike LDCs, already have the capacity to raise issues of concern at the WTO. For the investment and medicines cases where NGOs supported developing countries, NGOs promoted the sovereign right of states to pursue national objectives rather than adhere to international rules. In doing so, they lent moral support to the economic interests of developing states and their generic manufacturers (as well as generics firms located in wealthy regions of the world) for the medicines case, while for the investment case, NGOs provided developing member states with an additional bargaining chip in their attempts to negotiate a better deal on agriculture. And, in relation to labour standards, NGOs served to legitimise (albeit less successfully) the goals of already influential WTO member states by emphasising the human rights dimensions of labour standards. Though these issues were dealt with at the WTO in ways that did not necessarily align

with NGO objectives, their role in promoting these issues at the agenda-setting stage was nevertheless significant.

Another factor that shaped the type of role played by NGOs in the international trade regime at the WTO is the *type* of policy change advocated. As Paul Nelson contends, in contesting international economic policy, attempts by NGOs to defend and strengthen national authority against international rule-making are more likely to be successful than attempts to invoke international authority to shape or override national authority (2002, 389). This particularly appears to be the case at the WTO where a proposed policy change involving a contraction of the WTO's mandate seems more likely to be acted upon than policy changes involving an expansion of the WTO's jurisdiction. This relates to difficulties in achieving progress at the WTO due to institutional characteristics such as consensus decision-making and the single undertaking approach to negotiations, whereby progress on any issue can only be achieved with the agreement of all members on every aspect of every agreement. In other words, removing issues or modifying existing issues is an easier task than adding a whole new issue to the agenda. In this way, the WTO arena was relatively amenable to some campaign objectives (medicines and investment) and obstructive for others (labour standards). This factor helps to explain why power-based outcomes do not always prevail at the WTO. With a unified position and carefully constructed arguments informed by NGOs, less powerful developing countries seeking to modify or remove issues from the agenda can boost their leverage at the WTO to take advantage of the consensus-based decision-making rules.

Two of the cases of NGO campaigns (medicines and labour standards) reveal that the US domestic political arena can be strategically important for NGOs campaigning on international trade issues. For the medicines campaign, the US presidential elections provided the NGOs with leverage to pressure the Clinton administration over its role in attempting to limit the access of developing country to generic medicines. Publicising the role of presidential candidate Al Gore and his links to the research pharmaceutical industry, NGOs were able to extract a commitment from the Clinton administration in the form of an Executive Order, which stated that sub-Saharan African nations would not be targeted. However, it should be noted that this did not prevent the US from subsequently pressuring Brazil over its IP laws. And, for the labour standards campaigners, the US presidential elections saw President Clinton attempt to reinvigorate the support of the US labour movement, which allowed the AFL-CIO (an ICFTU affiliate) an important avenue through which to influence the US position on labour standards.

Though James Rosenau accurately describes NGO activity at the international level as 'sovereignty-free' (1990), this study has found that their transnational character does not preclude NGOs from supplementing the resources and legitimacy of nation-states in international trade politics at the WTO. However, the cases reveal that NGOs should not simply be seen as state instruments; their campaign activities are sufficiently independent from states to warrant this

detailed study into how their activities affect the international trade policy process. In illustrating this, I have found that WTO institutional settings and processes, as well as NGO relationships with states outside formal WTO bargaining, are significant contributors to the agendas, instruments, and postures of state participants in the WTO arena.

Chapter 8

CONCLUSION

Taking account of the empirical reality of the increasing number of NGOs actively engaged with international trade policy issues and the WTO, this thesis has sought to shed light on the roles undertaken by professional reformist NGOs in the international trade regime. I found that while NGOs do not ‘restructure’ states’ interests, as suggested by constructivist scholars, neither are they “servants of state policy” (Haufler 1995, 108). NGOs undertake important roles, independently of states, at the agenda-setting phase of the international trade policy process, though their campaign activities inevitably assist various member states that possess complementary objectives. Specifically, through their international campaigns, NGOs publicise neglected trade-related issues, persuade other relevant actors to support their positions, boost the resources of developing member states, and highlight normative rationales for policy positions. NGOs achieve all of this despite their exclusion from the WTO decision-making arena. This study has thus found that NGOs certainly do ‘matter’ in international trade politics, as they do in international politics more generally.

In examining the literature on NGOs and the WTO, as well as the scholarship on NGOs in international politics more generally (see Chapter 2), I found that the major concerns revolve around the potential of NGOs to rectify the WTO’s democratic and legitimacy deficits and the role of NGOs in creating and disseminating normative ideas and values. For example, sympathy for the causes of many NGOs, especially in the areas of human rights and environmental protection, has led constructivist scholars to focus on demonstrating that normative ideas and values can shame states (and other actors such as MNCs) into vanquishing their less noble instrumental objectives. Meanwhile, global social movement theorists investigate the constraints and opportunities for sustaining social movement activity internationally, highlighting the interrelationships between different types of transnational activists. In doing so, both approaches fail to clearly specify how norms disseminated by NGOs affect international policy processes and do not provide a significant enough role for power and interests. Consequently, constructivist and social movement perspectives can only be considered partial accounts of NGOs in international politics that do not take account of the full breadth and influence of NGO activity and their impacts on governance at the international level.

Given the focus of this study on the international trade policy process, as well as the economic interests at stake for WTO member states in the negotiation of international rules to liberalise trade, not to mention the domestic political consequences for governments, this study instead adopted a governance-centred approach. Based on neoliberal institutionalism spearheaded by Keohane and Nye’s *Power and Interdependence* (1977), this approach provided scope to examine

not only the normative values and ideas disseminated by NGOs and the role of states' interests (and how these coincide), but also the decision-making characteristics of the WTO. In highlighting structural and interest-based factors alongside normative values and institutional practices, a governance-centred approach allowed for an understanding of how NGOs work strategically to affect international decision-making in the area of trade liberalisation. It therefore provides a more balanced framework upon which to understand the role of NGOs in the international trade regime than the constructivist or global social movement approaches.

Having examined the WTO-NGO literature and the more general transnational advocacy literature and established a governance-centred perspective as the most appropriate for investigating the role of NGOs at the WTO, I employed a comparative case study method to set up the methodological framework for the study. Three cases studies of NGO campaigns, in the areas of labour standards, IP rights and foreign investment rules were selected to examine the tactics and strategies used by NGOs to contest WTO decision-making and to assess their role in the international trade regime. The key differences across the cases included the type of policy change advocated by NGOs for the WTO arena, and the development status and international influence of the WTO member states with whom NGO objectives aligned. Given their limited formal status within the WTO decision-making arena, NGO influence was conceptualised in terms of agenda-setting. In the detailed examinations of NGO campaigns in the case study chapters (Chapters 4, 5 and 6), I analysed the core conflicts and previous international cooperation in the issue area, the key actors involved, and NGO campaign tactics and strategies. Further, the way in which each campaign issue was eventually dealt with at the WTO was investigated.

Finally, Chapter 7 of the study compared and contrasted the insights generated by each of the cases to examine the agenda-setting roles played by NGOs in the international trade regime. Specifically, I found that NGOs undertake what can be broadly described as a publicist role whereby they highlight neglected trade-related issues. In doing so, NGOs harness various political opportunities to construct a plausible narrative, which contains a particular interpretation of the alleged policy problem and privileges the policy solution favoured by NGOs. The major types of political opportunities that NGOs used to promote their campaign issues included policy crises, especially those concerned with the implementation of international trade rules; political events such as US presidential elections; the offending activities of particular MNCs and nation-states; and deficiencies in existing international agreements.

Having developed a rationale for change at the WTO and instigated international debate about their campaign issues, NGOs attempted to mobilise support for their campaign goals. They did so by hosting international conferences that bring together representatives of NGOs, nation-states and international institutions; conducting and publishing their own research and analysis; monitoring the WTO negotiations; lobbying at relevant international institutions other than the WTO; and stage publicity events and demonstrations to capture the attention and support of the general

public. These external campaign tactics put pressure on nation-states to address the issues at the WTO. Additionally, where NGO objectives aligned with developing WTO members, their provision of technical and legal advice; monitoring services; negotiating strategies; and assistance with texts for consideration at WTO meetings, enhanced the resources of LDCs, thereby boosting their capacity to contest the issues in the WTO arena.

The cases of NGO campaigns reveal that in addition to their role in publicising neglected issues through political opportunism and mobilising support for their goals, NGO campaign activity also serves to enhance the legitimacy of the self-interested motivations of states for policy changes at the WTO. For the access to medicines and investment campaigns, the intersection of NGOs' normative goals (in regard to human rights and domestic policy flexibility) with the developing nations' strategic, economic and domestic political interests boosted the negotiating positions of these states at the WTO. NGOs and developing states were able to fend off attempts by campaign opponents (the European Commission in the investment case and the research pharmaceutical companies in the medicines case) to undermine their objectives with alternative normative rationales. The labour standards campaigners however were less successful in highlighting the human rights aspects of a WTO social clause. Despite the level of cooperation between the ICFTU and the US and Norwegian governments, the normative aspirations underpinning the push for a labour standards clause, as promoted by the ICFTU, were overshadowed by the competing claims of developing country governments and NGOs such as TWN. Their economic arguments concerning the negative impacts of a WTO social clause on developing countries had the effect of undermining the ICFTU's campaign and heightening opposition among developing countries in regard to the social clause.

Together, the three cases of NGO campaigns illustrate that the roles of NGOs in the international trade regime differ according to whether their campaign objectives resonate with developing or developed nations. In sum, where NGO campaign objectives align with those of less developed WTO members, NGOs are enabled to play a greater role. By providing information and analysis on key issues and monitoring progress at the WTO, NGOs can persuade LDCs to contest issues at the WTO and in doing so, may inform their negotiating positions. In this respect, NGOs facilitate the trade regime by bolstering the political clout of LDCs at the WTO, putting them on a more equal footing with their influential counterparts. Based on the insights of the labour standards case, where NGO campaign goals resonate with already influential states at the WTO, NGOs appear to play a greater role in highlighting the moral dimensions of the proposed policy change, thus strengthening the negotiating position of the member states involved. This explains why the Norwegian and US governments provided campaign finances and liaised so closely with ICFTU affiliates in the lead-up to WTO ministerial conferences.

In explaining the treatment of each campaign issue within the WTO arena, the type of policy change advocated by NGOs and WTO member states was significant and reflects the importance

of the WTO's unique institutional characteristics. In regard to all three campaign issues, the WTO's decision-making processes prevented power-based outcomes from prevailing. Unlike the World Bank and IMF, where powerful donor states achieve their objectives due to their larger portions of the voting share, decision-making at the WTO occurs on a single undertaking, consensual basis. These decision-making practices heavily conditioned the outcome of NGO campaign issues once on the WTO agenda. Specifically, proposed policy changes that involve the WTO removing an issue from its jurisdiction or modifying an existing issue appear more likely to be acted upon than policy changes involving an expansion of the WTO's powers. This helps explain why the push for a WTO social clause was unsuccessful, despite backing from influential states, while the attempts to remove investment negotiations and resolve the TRIPS safeguard issues were achieved by developing members.

While it is unlikely that NGOs will be granted participation status at the WTO in the foreseeable future, an examination of recent NGO activity in relation to international trade nonetheless contributes our understanding of the important roles of NGOs in international politics. Overall, the cases demonstrate that NGOs are significant actors in international trade politics at the WTO, which represents a 'hard' test case for examining the influence of non-profit advocacy organisations in international politics given that they lack formal status at the institution and expectations that business actors enjoy privileged access. As such, contrary to much of the existing WTO-NGO literature, this thesis demonstrates that understandings of NGOs should not be confined to their untapped potential to improve the democratic accountability of the WTO. NGOs are highly active on international trade policy matters and make important contributions to the agenda-setting stages of the international trade policy process. The institutional characteristics of the WTO arena and the compatibility of NGOs' normative objectives with states' interests are key factors that shape these interactions between states and NGOs in the context of international trade policy making.

Avenues for further research

The findings of this study reveal a number of avenues for future research in regard to NGOs at the WTO. In particular, more case studies of NGO campaigns that target the organisation are required to further appreciate the relationship dynamics between NGOs and WTO member states according to the policy change advocated. Based on the cases selected for this study, it was found that NGOs played more active agenda-setting roles when their objectives in having an existing WTO accord modified and a potential new issue removed from the agenda aligned with developing countries, while they played more of a legitimacy enhancing role when they supported influential members in seeking to add a new issue to the WTO's agenda. To further test these factors, additional case studies might examine NGO campaigns that align with the goals of developing member states, which seek to expand the WTO's authority. This would not only allow for a more thorough

examination of the policy change ‘variable’, but how the power status of the states involved affects the agenda-setting roles of NGOs. Other focus areas might include the extent to which NGOs can move beyond their legitimacy enhancing role where their campaign goals align with influential developed states. More research is also needed to examine the circumstances surrounding NGO campaigns that fail to achieve an agenda-setting role at the WTO.

Finally, a comprehensive analysis of the increasing trend whereby NGO representatives are obtaining places on the official delegations of member states to WTO ministerial conferences is required. Very little has been written about NGO participation via government delegations at the WTO: there appears to be no comprehensive list of states that have extended this privilege to NGOs and it is difficult to find any detailed analysis or authoritative source on this issue. While this study touched upon this phenomenon to provide evidence about the increasing activity of NGOs in regard to the WTO and Coulby and Ndrangu (2001) discuss it from an NGO practitioner’s perspective, a more thorough investigation is necessary to determine which particular NGOs are gaining access and the advantages and disadvantages for both NGOs and states. For example, what impact does this ‘insider’ status have on the capacity of NGOs to realise their objectives and to what extent are NGOs hamstrung by their close associations with member state governments at ministerial conferences? For member states, there are likely to be differing motivations behind the decision to include NGO representatives on government delegations to WTO ministerial conferences. LDCs may seek to utilise NGO input simply as an additional source of technical advice, while for wealthy states, the presence of NGOs may simply indicate the consultation processes that governments undertake with a range of interest groups at the national level. This may explain the strong presence of business and trade union representatives over other types of public interest NGOs on government delegations to WTO ministerial conferences.

Ultimately, given the growth of the NGO sector internationally and the increasing relevance of multilateral economic policy institutions, especially in today’s uncertain global economic climate, a better understanding of the implications of NGO activity is imperative.

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